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ABSTRACT

The focus of these hearings was on the impact of proposed broadcast deregulation on issues related to minorities in the media--namely, minority programming, the portrayal of minorities in the media, minority ownership of media properties, and equal employment opportunities within the communications industry. Testimony was given by representatives of minority and nonminority organizations concerned with the communications industry, by representatives of media properties, and by a representative of the Federal Communications Commission. (CMG)

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MINORITY PARTICIPATION IN THE MEDIA

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER PROTECTION, AND FINANCE

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

SEPTEMBER 19 AND 23, 1983

Serial No. 98-93

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MINORITY PARTICIPATION IN THE MEDIA

MONDAY, SEPTEMBER 19, 1983

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
CONSUMER PROTECTION, AND FINANCE,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:20 a.m., in room 2123, Rayburn House Office Building, Hon. George T. (Mickey) Leland presiding; Hon. Timothy Wirth, chairman.

Mr. LELAND. We are going to get started, ladies and gentlemen. Good morning to all of you. I would like to preface my remarks by thanking Chairman Wirth for scheduling these very important hearings and for his leadership with regard to the issues of enhancing diversity in the media, and increasing minority participation in the broadcast industries. I know Chairman Wirth would very much like to be here himself to greet you. Unfortunately, because of a scheduling conflict that he was unable to avoid, he will not be able to be here as we begin this hearing. He will, however, be here shortly.

I welcome this opportunity to participate in this discussion of the problems confronted by minorities in the media. I think it is particularly appropriate for the subcommittee to consider the broadcast industry's treatment of minorities and minority concerns now, as we begin to actively consider legislation geared toward deregulating broadcasting. I must confess that I often wonder, given the shabby treatment of minorities in a regulated environment, how will we fare after deregulation? Moreover, I wonder if we truly can build into any deregulation legislation sufficient structural safeguards to insure that the needs and concerns of all of our citizens—black, brown, and white; old and young; rich and poor; urban and rural—are served by the broadcasting industry.

It is clear to any objective observer of the television industry that the record of the industry with regard to portrayal of minorities and enunciation of minority concerns is, and historically has been, abysmal. There has been very little educational or informational programing geared toward minority audiences on either local or network television. There has been even less effort to accurately portray minority life in standard commercial entertainment fare. Far too often, talented minority actors and actresses are reduced to stereotypical portrayals or comedic roles. A report concerning the television industry prepared by the U.S. Commission on Civil Rights noted that when blacks appear on television, they

rarely are portrayed seriously. The report also noted that while whites often are shown in ridiculous roles in television, they also are seen in other programs and roles, while minorities appear most often in situation comedies. According to the report, the roles of blacks in television situation comedies largely fixes an image in the public mind of a ridiculous and nonserious people. In the absence of any balance, these shows grossly distort minority life in America, serve to reinforce negative images of minority life, and bolster societal racism and sexism.

I am concerned with the image television programing has on the minds of our populace at large, but I am particularly concerned about the effect this programing has on the young, both minority and nonminority. The richness and vitality of the minority experience in America is rarely, if ever, depicted on television. Because of this omission, the American public is denied the opportunity to view realistic and socially meaningful programing, and young children of all races are denied minority role models.

What is particularly disheartening is that there does not appear to be any effort on the part of those people most responsible for programing decisions to do anything to remedy the situation. This month the three major networks are unveiling their fall programs. After reviewing the new schedule, it appears to me that it is business as usual in Hollywood. Most of the new programing, particularly dramatic series, are devoid of minority cast members in either leading or supporting roles. Those few new shows that do feature minorities in prominent roles are, for the most part, situation comedies. One of these shows features, and I quote, "Shabu, a hip black genie with jive magic." That is roughly "I Dream of Jeannie," only with soul. This is just what television needs in 1983: a black slave happily doing the bidding of his white master. Is this really the best the industry has to offer its viewers, much less its minority viewers?

I am also concerned about the absence of minority family life on television. Other than Alex Haley's Palmerstown series a few years ago, there have been no weekly dramatic series involving black family life. Television is devoid of black nuclear families. Instead, the powers that be in television would rather do treatments of cute and sassy black orphans taken in by benevolent white households. Is it not ironic that in a medium that has no regularly scheduled series featuring black family life there are now two series featuring black children adopted by white households? Did Arnold of "Different Strokes" really need a clone? More importantly, did television or the viewing audience really need a clone of Arnold?

My TV Guide also brought me some other welcome news about this season's fall schedule. Beginning last Saturday, we have a new addition to the Saturday morning children's television ghetto. Yes, despite popular demand, Mr. T now has a Saturday morning TV series, in addition to his heart-warming role on "The A-Team." While I am certain that Mr. T is a genuinely nice and well-meaning individual, I am concerned whether the character he portrays is the best possible role model for children. I am also dismayed that he is quite possibly the most visible black person on television today. I question why an industry which has studiously avoided portraying the pantheon of black heroes which spans this country's

history chooses to make a folk hero for our children out of Mr. T. In the fifties and sixties, America's folk heroes were Daniel Boone, Davy Crockett, and the Cartwrights of "Bonanza." There were no black heroes. In the seventies we had Kojak, Baretta, and Starsky and Hutch, not to mention Charlie's Angels. Again, no black heroes or Hispanic or other minority heroes. Now, in the eighties, we have Mr. T. I guess Hollywood would call that progress.

In our discussion today I hope we will have an opportunity to discuss some of the solutions to the problems we all are concerned with. What can and should we in Congress do and what can our counterparts in the industry do to remedy the situation in Hollywood that perpetuates tokenism and stereotyping? This is not a new problem. Since the advent of the television industry, minorities have fought for fair treatment at the hands of television's writers, producers, and network executives. But in 40 years of television, there has been markedly little progress. Unless one considers it progress to go from a maid in "Beulah" to a maid in "Gimme a Break"; or sees the trip from Amos and Andy to Mr. T as progress; or takes comfort in the history that begins with Farina and Buckwheat and concludes, for the moment, with Arnold and Webster. Is it progress to have begun with a character like Stepin' Fetchit and have evolved no farther than Shabu the Jive Genie? I do not consider it progress. It is still a distorted view of minority life by white writers for white viewers. I hope that one day television and the other communications media will be as good as they are capable of being. I hope that minorities will not have to continue to avert their eyes in shame at the portrayals of our lives but instead can view with pride programing documenting our contribution to this Nation.

It is my sincere hope that from this hearing we will all gain a better understanding and appreciation of how the industry responds to the needs and interests of the minority community. I also hope this hearing will serve to crystallize the concerns of the minority community with regard to broacast deregulation.

In concluding my remarks I would like to acknowledge the efforts put forth by this distinguished assemblage of panelists. I know that many of you traveled great distances and postponed or canceled various professional and personal commitments in order to attend this hearing. I would like to extend my personal thanks, and the appreciation of my colleagues on the subcommittee.

[Mr. Wirth's prepared statement follows:]

OPENING STATEMENT OF TIMOTHY E. WIRTH

Today the Subcommittee on Telecommunications, Consumer Protection, and Finance continues its hearings toward the development of Consensus broadcast regulation reform legislation by examining the issues related to minorities in the media—namely, minority programming, portrayal of minorities in the media, minority ownership of media properties, and equal employment opportunity within the communications industry.

The subcommittee is currently in the process of devising legislation that would repeal the comparative renewal process—the key means today of assuring that minority groups will have the ability through license challenges to spur a broadcaster to improve or increase the amount of programming aimed at the needs and interests of the minority audience. The legislation being developed would replace this with a standard that quantifies broadcasters' programming responsibilities. The goal in devising this legislation is to ensure broadcaster responsiveness to the

public, in terms of the performance by the broadcaster of his public trustee obligations, while giving greater certainty to the broadcast licensee. But, any consensus broadcast legislation must deal with the critical issues which we will be discussing today.

This subcommittee has consistently maintained the goal of information diversity. This basic first amendment principle is fundamental to the free exchange of ideas that characterizes our free and democratic society. Our promotion of this principle must include the assurance that our Nation's diverse populace—particularly our minority populations—receive satisfactory levels of programming directed toward their needs and interests. This goal must be met through diversity of ownership, employment, and programming.

Television and radio have the unique ability to bring America together through the presentation of diverse ideas and thoughts. But, this great potential cannot be realized when much television is replete with portrayals of minorities that, through stereotype, may often be demeaning. Nor can it be realized if there is no programming, or only a minimal amount of programming, that is specifically directed toward the needs and interests of our minority communities.

Diversity on one side of the camera, however, can hardly be achieved without a corresponding representation on the other side. While the nexus between diversity of media ownership and diversity of programming sources has been repeatedly recognized by both the courts and the FCC, the statistics regarding minority ownership and employment in this country are appalling.

Our witnesses today will focus on these very real and very critical issues. I look forward to their testimony.

Mr. LELAND. I, now, would like to yield to my colleague from Texas, the Hon. John Bryant, for an opening statement.

Mr. BRYANT. Thank you, Mr. Chairman. I wish to associate myself with your remarks and to commend Chairman Wirth as well as Congressman Leland for calling this hearing today on minorities in the media to explore the impact of broadcast deregulation on efforts to improve minority representation in television programing as well as media ownership and equal employment opportunity. The substantial underrepresentation of minorities in media ownership and programing is a significant personal concern of mine and of many other Members of Congress. I think it would do the broadcast industry well to be on notice that it is not only the black Members of Congress who are concerned about this but their white colleagues in the House and Senate as well. There is, I think, a broad consensus among the Members of Congress that this is a serious problem and one I hope we can address in this session.

Even the barebones data we on this subcommittee have received shows how underrepresented blacks, Hispanics, and other minority groups are in television entertainment programing. The situation is even more dismal in nonentertainment programing.

Programs which portray minority individuals in only comedic or service worker roles do a disservice not only to minority people, but to all Americans. Continued reinforcement of negative stereotypes do not further efforts toward successful integration in our business communities and our national economy as a whole, our neighborhoods, or any other part of American life. Programs which portray blacks, Hispanics, and other groups as cooks and janitors, instead of teachers and civil servants or doctors and lawyers, not only belie the successes members of minority groups have achieved, but misstate our national aspiration for members of these minority groups.

Today, I am pleased to become a cosponsor of House Resolution 1155 offered by Cardiss Collins. This Minority Telecommunications Development Act of 1983 would increase minority ownership of broadcast stations and insure equal employment opportunities.

Broadcast deregulation legislation which will be considered by this subcommittee in the near future must contain the basic provisions of H.R. 1155. I am confident that the subcommittee and the full Energy and Commerce Committee will pass legislation which preserves the gains made by minorities in the broadcast media and guarantee that progress will continue to be made until minority groups are adequately and fairly represented in the media. I also believe that strong language guaranteeing equal employment opportunities will be part of any legislative package.

I am also proud to be a cosponsor of the Minority Telecommunications Ownership Tax Act sponsored by Congressman Leland as another means of assisting minorities acquire broadcast stations by offering tax incentives to enable minority groups to attract necessary capital to buy broadcast stations.

I look forward to hearing of the experiences our distinguished witnesses will share with us. Most especially, I wish to hear their opinions and suggestions for improvement in light of the legislative proposals under consideration to eliminate comparative renewal in FCC licensing procedures.

I share Congressman Leland's concern about the direction we may be going with regard to broadcast deregulation and the possible impact that it may have been in the future on minority programing, particularly in view of the fact that even under a heavily regulated scheme there has been relatively little progress. I want to restate one more time, perhaps in light of what happened over the weekend, no one was happier than I was and I think many white persons shared the interest in seeing the racial barrier broken at the Miss America Pageant when a black person was chosen as Miss America. I hope that will not be seized upon by people who want to go slow in the area that Congressman Leland is trying to lead us into. Those people might say this shows a good amount of progress. It is important to recognize that Miss America is an entertainment figure and blacks are well represented in the entertainment segment of the media. We are here today to talk about what we can do to see black families, black professionals, and normal black day-to-day life portrayed accurately in the media, and I congratulate Congressman Leland for bringing us here today.

Mr. LELAND. Thank you.

Congressman Bates from California.

Mr. BATES. My sincere thanks to Mickey Leland for the leadership he has demonstrated today in calling these hearings. Unfortunately, racial discrimination is a fact of life in America in 1983. Any deregulation or lessening of regulation for the broadcast industry should be tied to specific tradeoffs or proposals which improve the problems that will be identified at the hearings here today. I think the title "Minorities in the Media—The Impact of Broadcast Deregulation, Portrayal of Minorities, and Other Issues," the linking of those subjects is most appropriate. From congressional staffs, subcommittees, and committee staffs to Federal Commissions and the broadcast industry, affording minorities equal employment in hiring practices is still not adequate and in need of dramatic improvement. While the overall quality of television programing is poor, filled with racial and other violence and a lack of adequate children's programing, the roles of minorities is most in-

adequate of all. So I am here today to listen and learn and pledge my total support to your leadership, Mr. Leland.

Thank you.

Mr. LELAND. Thank you.

The gentleman from California, Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I want to join my colleagues in commending you for holding this hearing. I think it is important for us to get an airing of this issue and to see what legislative proposals we might adopt. Our responsibility in the Congress relating to the television media is to make sure that we give the American people an opportunity for diversity of programing and to have the opportunity for this very important media to bring about new ideas and communications about the lives of people in a way that will actually communicate reality. Unfortunately, as you have pointed out, we see stereotypes perpetuated by the television media so often that it has to distress any of us as we look at the potential that is lost from this very important communications vehicle. I think our objective has to be for full participation of all of our people, both in front of the cameras and behind the cameras. We want the stereotyping to be eliminated and we also want full employment in all employment in the industry to be afforded all people. So I want to commend you and to pledge my support to work with you on any legislation that would be helpful in this regard.

Mr. LELAND. Thank you very much.

We will now proceed to our panel. We have six witnesses scheduled to testify today. We have present now Mrs. Wilhelmina Reuben Cooke, who is with the Citizens Communications Center. We have Mr. Raul Yzaguirre with the National Council of La Raza. We have substituted for Mr. Ben Hooks the executive director of the NAACP, who is unable to be here with us, Mr. Willis Edwards, who is president of the NAACP chapter of Hollywood. Mr. Edwards is very, very well known in this area, and has been leading the fight for the NAACP to achieve some changes made with minorities in the media. Also present is Peggy Charren, with Action for Children's Television. Thank you Ms. Charren for traveling to join us. We very much welcome you, because we know what the problems are with stereotyping of children in television. You have been very much involved for so long.

So we will now proceed, and I will now recognize Mrs. Wilhelmina Reuben Cooke.

STATEMENTS OF WILHELMINA REUBEN COOKE, ON BEHALF OF CITIZENS COMMUNICATIONS CENTER AND BLACK CITIZENS FOR A FAIR MEDIA; RAUL YZAGUIRRE, PRESIDENT, NATIONAL COUNCIL OF LaRAZA; PEGGY CHARREN, PRESIDENT, ACTION FOR CHILDREN'S TELEVISION; WILLIS EDWARDS, PRESIDENT, BEVERLY HILLS/HOLLYWOOD BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; J. FRED MacDONALD, PROFESSOR OF HISTORY, NORTHEASTERN ILLINOIS UNIVERSITY; AND ARNOLDO S. TORRES, NATIONAL EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Ms. COOKE. Thank you, Mr. Leland and members of the subcommittee. I appreciate the opportunity to appear before you this morning on behalf of Citizens Communications Center and Black Citizens for a Fair Media to discuss our mutual concerns and dissatisfaction with the present level of participation and presence of minorities in the telecommunications industry.

Citizens is a Washington, D.C., based public interest law firm which assists groups such as Black Citizens for a Fair Media on communications issues.

From whatever perspective we adopt, be it numbers or portrayal, we must conclude that we fall woefully short of the objectives of full economic and artistic participation in the media. Even more troubling are the indicia that the images of minorities presented by the media are, at best, infrequent and, at worst, stereotypic and negative. Indeed, one looking at television would assume that America has very few minorities and all of them were black.

I'll now review sections of "Window Dressing on the Set," the historic Civil Rights Commission report, except to emphasize their finding that from 1969 to 1974, the Commission concluded that minorities were disproportionately underrepresented in numbers, economic status, and portrayal in serious versus comic roles.

Responding to criticisms of outdated statistics, the Commission published "Window Dressing on the Set: an Update" in 1979. The conclusion: the portrayal of minorities had not improved since 1974. Indeed, in some cases, stereotyping had actually increased.

I doubt that anyone who testifies today will seriously suggest that the situation has improved since the end of the seventies. Indeed, the likelihood is that you will be presented with more graphic and anecdotal evidence that the situation has worsened.

There are essentially two ways of improving the portrayal of and increasing the presence and participation of minorities in the electronic media: minority ownership and regulation. I fear that both approaches are under serious contemporary challenge.

Less than 2 percent of the Nation's broadcast facilities are minority owned despite the fact that minorities comprise more than 20 percent of the Nation's population. Significantly increased minority ownership is key in addressing the inadequate presence and distorted representation of minorities throughout all levels of the media. It is the licensee after all who is ultimately responsible for identifying the needs, interests, and problems of the community and determining what, if any responsive programing is to be broadcast. The opinion-shaping influence of the licensee on a community

through the selection of news, public affairs issues, and political and general editorials can be graphically attested to by beneficiaries and victims alike The licensee is also ultimately responsible for employment practices at the station.

Unfortunately, present ownership statistics and a realistic assessment of current deregulatory initiatives do not suggest significant future improvements with respect to minority ownership. First, even with a doubling of the statistics since the inception of the "Policy Statement," we are just at the 2-percent ownership mark. Second, this increase was based primarily on the distress sales policy which permits licensees who face a revocation hearing or who have been designated for renewal hearing on basic qualification issues to avoid a hearing and possible loss of a financial interest in the license by selling to a minority applicant at 75 percent of the station's fair market value. I think it is important to note that the distress sales policy which has been key in doubling minority ownership was in fact tied to the regulatory structure and that most of these resulted from serious petitions to deny based on regulations many of which have been or are in the process of being dismantled. So we have seen a doubling we cannot anticipate the future simply because in the area of radio we have had deregulation.

This is not to argue for a labyrinth of arcane, inefficient rules on the theory that the more rules we have, the more likely we are to catch some licensee, thereby increasing the chances for a distress sale. It does suggest, however, that we look carefully at the various purposes of particular deregulatory initiatives and their interaction with other policy objectives. This is particularly true in the area of structural regulation.

I would like to examine for a moment multiple-ownership restrictions. Removal of ownership restrictions, and this is putting aside questions of unique dangers of concentration in the communications industry—removal of ownership restrictions including cross-ownership and regional concentration rules will undermine opportunities for minority ownership by forcing emerging minority entrepreneurs to compete with larger, increasingly vertically integrated, highly capitalized, and more established telecommunications firms Removal of ownership restrictions also vitiates the incentive for these firms to invest in minority firms, thereby further undermining various minority ownership initiatives.

Vigilance with respect to equal employment opportunity is also necessary to insuring the full participation of minorities in the electronic media. There have been serious attempts by the FCC to raise the reporting threshold. We know that at the smaller stations, where turnover is high and entry-level positions are available, minorities and women are most likely to get a foothold on the employment ladder.

I will summarize some of the other points. I think that any deregulatory legislation must be tied to strong ownership restrictions and EEO regulations if it is to be meaningful. The other question is in terms of quantification as opposed to the regulatory scheme. In my testimony I give examples of ways in which various groups have used the petition-to-deny process and the public-interest standard in order to have leverage with local broadcast licensees

and to obtain at the local level more responsive programing. It is clear that this has not been the answer to everything, but I think that the subcommittee in thinking about any kind of deregulatory initiative has to insure that there is tied to that kind of legislation some leverage so that citizens groups and minority groups at the local level can confront broadcasters with their problem and broadcasters have an incentive to be responsible and responsive to them.

Finally I would like to address the question how the subcommittee's present efforts to develop consensus legislation deregulating the broadcast industry and quantifying the public-interest standard can also address the need for minority participation and ownership of the media.

I would like to make three points. I think first the subcommittee must recognize that the needs of the minority audience are congruent with the primary need of all listeners and viewers. We need and we deserve as owners of the airwaves the best practical service. This means that any standards, and I am assuming standards not agreeing with quantification at all, that any standard has to be set high enough to achieve the goals of the comparative renewal system. I question whether or not this is possible, particularly in light of the industry's refusal to provide statistics to the subcommittee so that it can make a reasoned and reasonable assessment of what the public interest standards should be. I think one of the difficulties that the industry looking at their radio counterparts have learned is yes, Virginia, one can get something for nothing. Citizens have proposed in a number of instances a kind of program calculus in which several program categories could be established with percentages for "minimal," "substantial," or "superior" service.

It would be necessary to insure that one of the categories that is mandatory would be minority programing. Otherwise I think we would see what we have today, that minority programing would drop out of the picture in terms of quantification. So if it is a serious attempt it must be one of the prerequisite kind of categories. Additionally quantification could also recognize nonprograming criteria such as EEO profile, given the presumed relationship between minority employment and programing responsiveness; the fact that a licensee's EEO profile in the top four job categories reached parity, not zone of reasonability, could be counted as a credit toward the renewal expectancy. Similarly, failure to meet existing EEO standards would result in a substantial demerit or disqualification.

Thank you.

[The prepared statement of Ms. Cooke follows:]

Testimony of Wilhelmina Reuben Cooke
Citizens Communications Center
Georgetown University Law Center
on behalf of
Citizens Communications Center and
Black Citizens for a Fair Media

I appreciate the opportunity to appear before you this morning on behalf of Citizens Communications Center and Black Citizens for a Fair Media to discuss our mutual concerns and dissatisfaction with the present level of participation and presence of minorities in the telecommunications industry.

CITIZENS is a Washington D.C. based public interest law firm and resource center established in 1969 to provide legal and technical assistance, research, and educational services to citizens and community groups such as Black Citizens for a Fair Media on communications issues. Since 1981 CITIZENS has been a part of Georgetown University Law Center's Institute for Public Representation. Black Citizens for a Fair Media (BCFM) is a voluntary citizens organization established in New York City whose membership includes over 250 community organizations. Since 1971 BCFM has worked to improve media employment practices, to secure positive images of Black people on television, and to insure that all listeners and viewers receive responsive service from broadcast licensees.

I. The Presence and Portrayal of Minorities in the Electronic Media.

From whatever perspective we adopt, be it numbers or portrayal, we must conclude that we fall woefully short of the

objectives of full economic and artistic participation in the media. Even more troubling are the indicia that the images of minorities presented by the media are, at best, infrequent and, at worst, stereotypic and negative.

The electronic media dominate the mass communication of ideas about our society and ourselves. As noted in the United States Civil Rights Commission Report Window Dressing on the Set: Women and Minorities in Television (1977):

> Television does more than simply entertain or provide news about major events of the day. It confers status on those individuals and groups it selects for placement in the public eye, telling the viewer who and what is important to know about, think about, and have feelings about. Those who are made visible through television become worthy of attention and concern; those whom television ignores remain invisible."

At 1. (Citations omitted). Indeed, I know of no more eloquent recognition of the influence and pervasiveness of the electronic media in informing us and in shaping our social, cultural and political institutions than Sections 312 and 315 of the Communications Act of 1934 -- the "reasonable access" and "equal opportunities" provisions which are pertinent to political elections.

In Window Dressing on the Set, the Civil Rights Commission undertook a historic review of the appearances and portrayal of minorities and women in prime time television programming and news. Focusing on the period from 1969 to 1974, the Commission concluded that minorities were disproportionately

underrepresented in numbers, economic status, and portrayal in serious versus comic roles. Window Dressing also examined employment patterns within the television industry. While overall minority and female employment at the 40 television stations targeted for closer scrutiny increased between 1971 and 1975, the report emphasized that "[c]ontrary to the impression one may form from these data ... minorities and women have not necessarily made significant employment gains at these stations" Window Dressing at 127. Examination of job titles and corresponding duties revealed that minorities were not being fully utilized throughout all levels of station management. Decision-making was largely the province of the white male.

Responding to criticisms of outdated statistics, the Commission published Window Dressing on the Set: an Update in 1979. The conclusion: the portrayal of minorities had not improved since 1974. Indeed, in some cases, stereotyping had actually increased! For example, although the overall percentage of characters playing comic roles declined significantly from 18.1 percent in the 1969-74 period to 8.6 percent in the 1975-77 period, the percentage of minority male characters playing comic roles increased. These figures supported claims that minorities are intentionally portrayed as ridiculous and less serious than whites. Moreover, the disproportionately high number of minority teenagers compared to male teenagers suggested an attempt to cast minorities as youths rather than adults in order to avoid threatening white audiences. Finally, minorities other than Blacks continued to be virtually nonexistent in television drama.

Window Dressing on the Set: An Update, at 10, 20-22.

I doubt that anyone who testifies today will seriously suggest that the situation has improved since the end of the seventies. Indeed, the likelihood is that you will be presented with more graphic and anecdotal evidence that the situation has worsened.

II. Increasing the Presence and Participation of Minorities in the Electronic Media.

There are essentially two ways of improving the portrayal of and increasing the presence and participation of minorities in the electronic media: minority ownership and regulation. Both approaches are under serious contemporary challenge.

A. Ownership.

Less than 2% of the nation's broadcast facilities are minority owned despite the fact that minorities comprise more than 20% of the nation's population. Significantly increased minority ownership is key in addressing the inadequate presence and distorted representation of minorities throughout all levels of the media. It is the licensee who is ultimately responsible for identifying the needs, interests, and problems of the community and determining what, if any responsive programming is to be broadcast. The opinion-shaping influence of the licensee on a community through the selection of news, public affairs issues, and political and general editorials can be graphically attested to by beneficiaries and victims alike. The licensee is also ultimately responsible for employment practices at her

station. As the FCC noted in its Policy Statement on Minority Ownership of Broadcasting Facilities, 68 F.C.C.2d 979, 980 (1978), the courts have recognized that "minority ownership and participation in station management is in the public interest both because it would inevitably increase the diversification of control of the media and because it could be expected to increase the diversity of program content."

Unfortunately, present ownership statistics and a realistic assessment of current deregulatory initiatives do not suggest significant future improvements with respect to minority ownership. First, even with a doubling of the statistics since the inception of the Policy Statement, we are just at the 2% ownership mark! Secondly, this increase was based primarily on the distress sales policy. This policy permits licensees who face a revocation hearing or who have been designated for renewal hearing on basic qualification issues to avoid a hearing and possible loss of a financial interest in the license by selling to a minority applicant at 75% of the station's fair market value. However, these distress sales were triggered by substantial petitions to deny alleging serious infractions of FCC regulations -- many of which have been or are in the process of being dismantled.

This is not to argue for a labyrinth of arcane, inefficient rules on the theory that the more rules we have, the more likely we are to catch some licensee, thereby increasing the chances for a distress sale. It does suggest, however, that we look carefully at the various purposes of particular deregulatory

initiatives and their interaction with other policy objectives. This is particularly true in the area of structual regulation. A particularly timely example is in the area of multiple ownership restrictions.

B. Regulations.

Putting aside the dangers of concentration unique to the communications industry notwithstanding economic efficiencies, reassessment of existing multiple ownership restrictions must also include analysis of probable impact on minority ownership.[1] Removal of ownership restrictions, including cross-ownership and regional concentration rules, will undermine opportunities for minority ownership by forcing emerging minority entrepreneurs to compete with larger, increasingly vertically integrated, highly capitalized and more established telecommunications firms. Removal of ownership restrictions also vitiates the incentive for these firms to invest in minority firms, thereby further undermining various minority ownership initatives.

Vigilance with respect to equal employment opportunity is also necessary to ensuring the full participation of minorities in the electronic media. Present EEO rules require stations with 5 or more employees to file written EEO programs with the FCC annually. There have been serious attempts by the FCC to raise

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[1] First, the so-called explosion of video outlets and services creating a highly competitive marketplace exists, in any real marketplace sense, only on paper -- e.g. low power TV, direct broadcast satellites, teletext -- or in limited areas e.g. cable television. Thus, the notion that these multitude of services will necessarily result in more specialized offerings and minority oriented programming is suspect.

the reporting threshold, and it has only been the result of the vigilance and tenacity of public interest, civic and religious groups which has forestalled such action.[2] We know that at the smaller stations, where turnover is high and entry-level positions are available, minorities and women are most likely to get a foothold on the employment ladder.

In sum, any deregulatory legislation proposed by this subcommittee must also be tied to strong ownership restrictions and EEO regulations if full and effective minority participation throughout all phases of the telecommunications industry is to be more than today's media event.

Content oriented regulatory policies such as the Fairness Doctrine, ascertainment, processing guidelines for news and information programming have been developed under the public interest standard. While our presence here today is evidence of serious dissatisfaction with the lack of a diversified, pluralistic, and sensitive minority presence in the telecommunications industry, we would urge the subcommittee to move cautiously before dismantling the present public interest regulatory framework. There seems to be the presumption that because the system has not worked as well as it should, it hasn't worked at all, and thus any other scheme must be better. In fact, the flexibility of the public interest standard and a viable petition to deny process have provided the leverage

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[2] See e.g. Washington Post "FCC Quietly Told to Abandon Affirmative Action Questions" p. 3 Washington Business Section.

whereby minorities have been able through challenges and negotiations to make local media more responsive.

For example, in 1972 BCFM negotiated agreements at license renewal time with WNBC-TV and WABC-TV. Pursuant to those agreements both stations hired Black community affairs directors and took affirmative steps to improve Black programming and employment. On another occasion BCFM dealt with a local television station which usually began its newscasts with two or more crime stories. If the suspect was a minority person, the station showed a picture. When the suspect was white, the reporter just told the story -- without visual support. BCFM had several meetings with station management, stressing that this type of programming distorted the image of the Black community. BCFM's President Ms. Emma Bowen wrote of this incident:

> As it became clear that we were aware of the options available to us under the Communications Act and FCC rules, the station changed its policies. Other stations took similar actions. It was never necessary for us to file a complaint with the FCC. The problem was settled in the local community where it existed.[3]

Today BCFM holds ongoing discussions with New York stations to offer programming suggestions and to insure that they meet their obligations to minorities in the service area. As Ms. Bowen pointed out to this subcommittee on a previous occasion:

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[3]Testimony of Emma L. Bowen, President of Black Citizens for a Fair Media, New York City before the Subcommittee on Communications, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C., May 23, 1979.

> These rules and policies [which are derived from the public interest standard] provide the framework within which BCFM can gain the attention of local broadcasters and work for improved service. The FCC itself has done little, if anything, to aid our cause. But the local broadcasters know that they can not freeze us out just because we do not buy commercials, are not considered to be purchasers of advertised goods, and are excluded from the rating services that determine the programs we must watch. Under the law, if not in the marketplace, we are parties in interest.[4]

Put simply, it is crucial that any legislation proposing deregulation of the broadcast industry also contain regulatory processes which provide minority audiences with leverage to confront licencees with their unmet programming and service needs and which create incentives for broadcasters to seriously address those concerns.

III. Quantification of the Public Interest Standard.

The question presented is how can the subcommittee's present efforts to develop consensus legislation deregulating the broadcast industry and quantifying the public interest standard address the need for increased quantity and quality of programming directed toward the needs and interests of minorities?

First, the subcommittee must recognize that the needs of

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[4] Id. at 2-3.

minority audiences are congruent with the primary need of all listeners and viewers: listeners and viewers deserve and, as owners of the air waves, are entitled to the "best practicable service." This means that any quantitative standards must be set high enough to achieve the goals of the comparative renewal system envisioned by Section 309(e)'s competitive spur.

In the related context of comparative renewals, CITIZENS proposed that a calculus of various programming types could be established, with a minimum percentage set in each category, for both the "substantial" and "superior" levels of performance that must be achieved before a credit for that type of programming could be earned. Once an established number of programming credits is earned, the licensee's record is considered either "substantial" or "superior" and thus entitled to a renewal expectancy.[5] The higher the level of service the greater the weight attached to the renewal expectancy in the comparative balance. In order to assure the provision of certain basic programming, the incumbent might be required to meet the minimum percentages in certain paramount categories, which could include minority programming. The remainder of the credits needed to obtain renewal expectancy could come from any combination of the other enumerated categories.

Additionally, quantification could also recognize nonprogramming criteria such as the incubment licensee's EEO profile. Given the presumed relationship between minority employment and programming responsiveness,[6] the fact that a licensee's EEO profile in the "top four" job categories had reached parity could be counted as a credit toward the renewal expectancy. Similarly, failure to meet existing EEO standards would result in a substantial demerit or disqualification.

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[5] See Letter of Jeffrey H. Olson to Honorable Timothy E. Wirth, June 1, 1983 and accompanying memorandum, The Comparative Renewal Systems: The Reason Why It Has Failed and A Means of Giving it Vitality.

[6] See e.g., NAACP v. FPC, 425 U.S. 662, 670 n.7 (1976).

Mr. LELAND. Thank you.

We have had join us Dr. J. Fred MacDonald from Northeastern Illinois.

Mr. Yzaguirre, the Chair would like to recognize you.

STATEMENT OF RAUL YZAGUIRRE

Mr. YZAGUIRRE. Thank you very much, Congressman.

I would like to ask permission that my testimony be inserted in the record.

Mr. LELAND. The Chair encourages all of these panelists, to summarize their statements and submit their full testimony for the record.

Thank you.

Mr. YZAGUIRRE. I will just direct my attention to major portions of my testimony. Let me first state that your opening remarks, Mr. Chairman, were very eloquent and gave us a very good portrayal of the situation in the black community, but the situation in the Hispanic community, which I try to portray in my testimony, is more egregious and deserves our collective attention.

I come before this committee wearing three separate hats. I am the president of the National Council of La Raza, one of the major Hispanic organizations in the country. I am also chairman and chief executive officer of La Raza Production Center, a for-profit organization dedicated to try to provide programming material to public and commercial television; and also as chairman of the board of Associated Southwest Investors, an organization which concentrates or focuses much of its attention on financing of minority radio and television properties.

Let me give you a little bit of an overview of the Hispanic involvement in the electronic media. It is characterized by extreme under-representation in station ownership and control, policymaking at the network headquarters and local station level and within the Federal Communications Commission, overall employment, and on-air portrayals.

When Hispanics do appear on the air, presentations are very frequently inaccurate, negative, and insulting stereotypes. Let me summarize the current conditions regarding portrayals and stereotyping and their relationship to ownership and employment.

It has become widely accepted that the electronic media, and especially television, are a major socializing force in the United States. Consciously and unconsciously, viewers tend to adopt many of the perspectives presented on the screen, and to see the Nation as it is portrayed not only on the evening news, but also in situation comedies, detective shows, and other fictional programming.

It is also widely recognized—at least by specialists in the field—that the current portrayals of minorities on television tend to reinforce ethnic and racial stereotypes.

Hispanics have been severely victimized by such portrayals. Far too little has changed in the 9 years since the publication of "Window Dressing on the Set" and its update by the U.S. Commission on Civil Rights.

Hispanics rarely appear on prime time television, and when they do, they are usually cast as low-status persons, figures of fun, or

juvenile delinquents. Both television and radio news presentations generally ignore Hispanic issues, newscasters mispronounce Hispanic names, and few Hispanics serve as news correspondents or experts.

Minority-oriented public affairs broadcasting remains limited, and is rarely aired during prime time or fringe prime time periods. Non-Hispanics who take their cues from the electronics media are likely to perceive all Hispanics as poorly educated, semiliterate, unable to speak clear English, employable only in menial jobs, unassertive and probably lazy, yet extremely prone to gang violence and the commission of felonies with knives.

Positive role models—portrayals which accurately present such positive aspects of Hispanic life as strong and mutually supportive families, patriotism, often-decorated military personnel, and a strong desire to be independent and self-supporting, and portrayals of Hispanic political, corporate, and community leaders—are almost absent.

I go on in my testimony and talk about our problems in trying to establish a production center, the difficulties that we encountered in financing both from public and private sources and also to thank those corporations who have been sensitive enough to be supportive of our efforts.

In my testimony I talk about Hispanic ownership of broadcast facilities and I point out the lack of Hispanic stations and I point out in the statement that FCC Commissioner Henry Rivera made, the statement that currently we have from about 6 to 10 percent, that is, minorities have 6 to 10 percent parity in ownership, and at the current rate, it would be 100 years or more before parity is reached unless we do something very dramatic to change this reality.

I talk about employment in the media. The statistics on overall minority employment are quite dismal and the figures on Hispanics are much worse.

In 1982, just 4.7 percent of all broadcast personnel were Hispanic and only 3.1 percent of officials and managers, the policymakers of the industry.

In 1974, 2.1 percent of broadcast industry officials and managers were Hispanic. If it continues to take 8 years to increase the percentage of Hispanic key broadcast officials by 1 percent, given the rapid rate of the Hispanic population growth, it may be a century before such employment reaches parity for the Hispanic community.

Let me move to a series of recommendations, Mr. Chairman. We believe that—because of the inequities in ownership and employment and the means of reducing stereotypical presentation portrayals of Hispanics—these are complex and long-term problems, that too little has been accomplished under a situation where we have a regulated broadcast industry, and we are fearful that deregulation of a blanket nature is not conducive to furthering our goals of increasing minority participation in the media.

Let me conclude by indicating to you that we at the council are fearful, No 1, that given our lack of ownership and portrayal in the media, that a climate of deregulation does not help forward our cause.

We do not—as our previous speaker has indicated, we do not believe that regulation, per se, necessarily is to our advantage, and we do not believe that more regulations will necessarily increase Hisipanic ownership and portrayal in the media, but we do believe that a judicious look at all the aspects of regulation is most appropriate and that perhaps a positive effort such as those that have been discussed earlier might be appropriate at this time.

Thank you, Mr. Chairman.

[The statement of Mr. Yzaguirre follows:]

TESTIMONY ON

PROBLEMS CONFRONTING HISPANICS IN THE ELECTRONIC MEDIA

Before

The Subcommittee on Telecommunications,
Consumer Protection and Finance
U.S. House of Representatives

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PROBLEMS CONFRONTING HISPANICS IN THE ELECTRONICS MEDIA

I. INTRODUCTION

Chairman Wirth and distinguished members of the the Subcommittee, my name is Raul Yzaguirre and I am President of the National Council of La Raza (NCLR), a national Hispanic technical assistance and advocacy group whose primary constituency consists of Hispanic community-based organizations located throughout the country. I would like to thank you for inviting me to testify on the problems confronting Hispanics in the electronics media, a topic which has long been of the greatest concern to the National Council of La Raza and to Hispanics throughout the United States.

Because of the need to keep my remarks brief, and because of the very short lead time available to the Council for preparing our testimony, I will focus this morning on pointing out what we perceive to be some of the most critical problems for Hispanics in the electronic media, identifying some underlying causes, and suggesting some guidelines we believe must be followed if the wholly unsatisfactory status quo is to be remedied in the foreseeable future.

II. HISPANICS AND THE ELECTRONICS MEDIA

A. Overview

Hispanic involvement with the electronics media has been -- and remains -- characterized by extreme underrepresentation in station ownership and control, policy making at the network headquarters and local station level and within the Federal Communications Commission, overall employment, and on-air portrayals. When Hispanics do appear on the air, presentations are very frequently inaccurate, negative and insulting stereotypes. Let me summarize the current conditions regarding portrayals and stereotyping and their relationship to ownership and employment.

B. Portrayals of Hispanics

It has become widely accepted that the electronic media, and especially television, are a "major socializing force" in the United States (Miller, 1978). Consciously and unconsciously, viewers tend to adopt many of the perspectives presented on the screen, and to see the nation as it is portrayed not only on the evening news but also in situation comedies, detective shows, and other fictional programming. It is also widely recognized -- at least by specialists in the field -- that the current portrayals of minorities on television tend to reinforce ethnic and racial stereotypes.

Hispanics have been severely victimized by such portrayals. Far too little has changed in the nine years since the publication of Window Dressing on the Set and its update (U.S. Commission on Civil Rights, 1977 and 1979). Hispanics rarely appear on prime time television, and when they do, they are usually cast as low-status persons, figures of fun, or juvenile delinquents. Both television and radio news presentations generally ignore Hispanic issues, newscasters mispronounce Hispanic names, and few Hispanics serve as news correspondents or "experts." Minority-oriented public affairs broadcasting remains limited, and is rarely aired during prime time or fringe prime time periods. Non-Hispanics who take their cues from the electronics media are likely to perceive all Hispanics as poorly educated, semi-literate, unable to speak clear English, employable only in menial jobs, unassertive and probably lazy, yet extremely prone to gang violence and the commission of felonies with knives. Positive role models -- portrayals which accurately present such positive aspects of Hispanic life as strong and mutually supportive families, patriotism, often-decorated military personnel, and a strong desire to be independent and self-supporting, and portrayals of Hispanic political, corporate, and community leaders -- are almost entirely absent.

The problem, moreover, is not limited to commercial television and radio. As the Task Force on Minorities and Public Broadcasting (1978) pointed out so clearly, public broadcast stations have provided little minority programming at the local level and have not been adequately assisted or prodded by their national entities. For example, minority programs made available by the Corporation for Public Broadcasting have often been aired by only a small minority of stations. Only recently have non-commercial stations begun to recognize a specific need for programming by, for, or about Hispanics.

Underrepresentation and stereotyping directly harm Hispanics as well as negatively affecting the attitudes of non-Hispanics. The lack of positive Hispanic role models in the media -- Hispanic newscasters, stars of prime time programs, sympathetic and competent figures in in daytime or evening television dramas -- may negatively affect Hispanic children's self-images and aspirations. Seeing themselves through the "eyes" of television, Hispanic youth receive a distorted and discouraging image.

The National Council of La Raza's concern over underrepresentation and stereotyping is so great that in 1981, NCLR established a subsidiary, La Raza Production Center (LRPC), specifically to provide high quality, accurate programming for and about Hispanics. LRPC's first venture, Latin Tempo, a half-hour news and entertainment magazine, is now starting its third season, and is the first nationally syndicated Hispanic-produced commercial television program. Now financially successful, it appears in major Hispanic markets throughout the United States, providing positive and thoughtful portrayals of Hispanic Americans and Hispanic communities. LRPC's second major venture, HispanUS, is the first Hispanic series to have been chosen in the annual program fair of the Public Broadcasting System's Station Program Cooperative. The first of four yearly one-hour special documentaries on Hispanics in the U.S. will air on prime time this fall, and is expected to be carried by all the public television stations.

These successes were not easy to accomplish. LRPC was unable to obtain initial capital from any outside source, public or private, and exists only because NCLR provided its start-up and initial operating capital, and because several corporations -- including Gulf Oil, Nestle's, and General Motors -- recognize the importance of the Hispanic market and have become Latin Tempo advertisers.

LRPC provides one effective response to the problem of inadequate and stereotypical portrayals of Hispanics, but Hispanic-owned production companies are few. Significant, long-term changes in portrayals will require major increases in Hispanic ownership, control, and senior-level employment in the broadcast industry.

C. Hispanic Ownership of Broadcast Facilities

Hispanics continue to be minimally represented as owners of broadcast facilities, commercial and non-commercial. The only Hispanic-owned public television station, licensed in 1978 in Harlingen, Texas, recently went off the air for financial reasons after only about a year of broadcasting. Hispanic ownership of commercial VHF television stations is minimal (about 2%), and most of the Hispanic-owned VHF commercial TV stations are associated with the Spanish International Network (SIN) and are not owned by U.S. Hispanics. Hispanics own a handful of commercial radio stations (less than 1% of AM and FM stations) and even fewer non-commercial stations.

As FCC Commissioner Henry M. Rivera recently pointed out, over the past five years, minority ownership of broadcast stations has increased from 6% of parity to 10% of parity. At that rate, it will be 100 years before parity is reached -- and this projection does not consider the lack of equivalent affirmative efforts to assure minority participation as owners of the new delivery methods such as cable television.

Issues affecting ownership are complex, but clearly the single most severe obstacle to increasing Hispanic ownership of broadcast facilities is financing. While NCLR recognizes that the FCC is aware of the problem of inadequate minority ownership, and while we applaud current FCC initiatives to increase minority ownership, we fear they are too little, too late to overcome years of neglect.

D. Employment

Because accomplishing equitable Hispanic ownership of broadcast facilities remains a difficult and long-term goal, assuring equitable Hispanic representation among broadcast industry employees becomes very important. Employment can be improved much more rapidly, and NCLR believes that significant Hispanic representation among key policy makers and senior professionals throughout the industry can do much to assure increased sensitivity to the needs and concerns of the Hispanic community, especially with regard to programming.

Unfortunately, the evidence suggests that equity in employment may be as elusive a goal as parity in ownership. The statistics on overall minority employment are dismal, and the figures on Hispanics are even worse. In 1982, just 4.7% of all broadcast personnel were Hispanic, and only 3.1% of officials and managers -- the policy makers of the industry. In 1974, 2.1% of broadcast industry officials and managers were Hispanic. If it continues to take eight years to increase the percentage of Hispanic key broadcast officials by one percent, given the rapid rate of Hispanic population growth, it may be a century before such employment reaches parity.

NCLR is especially concerned that Hispanic employment in key positions is lower in broadcast headquarters offices than at local stations. While 3.2% of officials and managers of commercial television stations were Hispanic in 1982, the corresponding figure for broadcast headquarters facili-

ties was just 2.4%; while cable stations had just 2.8% Hispanic officials and managers, cable headquarters had only 1.8%. Non-commercial broadcast media are even less likely to have Hispanic senior officials than commercial media. Just 2.1% of officials and managers of educational television stations were Hispanic in 1982, and just 1.9% of top officials in non-commercial radio stations, as compared with 3.2% of officials and managers at commercial AM radio stations and 3.6% at FM stations. The situation within the national public broadcasting entities is no better. As of January 1981, the Corporation for Public Broadcasting, the Public Broadcasting System, and National Public Radio together had a total of just four Hispanic managerial and professional staff. Thus Hispanics are unrepresented in most programming and policy decision making within these three entities.

Minority employment at professional and managerial levels remains dismal within the FCC, the entity which is responsible for assuring equal employment opportunity within the nation's broadcast facilities. While figures released to this Subcommittee do not identify minority employees by racial or ethnic group, Hispanic employment within the FCC was less than 2% in 1981. As Commissioner Rivera recently indicated to this Subcommittee, of the three minority group members reported by the FCC to be lawyers, engineers, or economists within the Office of the Chairman or the Offices of the Commissioners, two were to leave by June 30, 1983, and the only remaining minority person works for Commissioner Rivera. As the Commissioner has pointed out, most minority gains at the FCC were made before 1981; since that time, new minority hiring at senior levels has been minimal. Moreover, as of late June, the post of Hispanic Program Coordinator had been empty for several months, and the FCC was reportedly considering making the post a part-time collateral duty for an employee who would have other responsibilities.

III. RECOMMENDATIONS

A. Overview

Many of the solutions to these inequities in ownership and employment -- and the means of reducing stereotypical presentations and non-portrayals of Hispanics -- are complex, long-term, and difficult to achieve. Moreover, far too little progress has been made in the past two decades, under a "regulated" broadcast industry. Deregulation of the electronic media must not be used as an excuse for the FCC or the federal government as a whole to abrogate its responsibility for assuring that broadcast entities adequately serve all parts of the community. Enforcement of nondiscrimination in all aspects of the industry remains a legal responsibility of the federal government regardless of how or by whom broadcast facilities are regulated.

The following are some measures which could begin to address current obstacles to Hispanic participation in the electronic media:

B. Employment

1. Hispanic employment, especially in policy-making and professional positions, must be significantly improved within the FCC and the national public broadcasting entities. This means, among other efforts, the appointment of full-time Hispanic Program Coordinators with the status and resources to carry out active and ongoing recruitment at colleges and universities and within non-broadcast industries from which Hispanic employees can be recruited. Top officials must become more sensitive to the necessity for improved Hispanic hiring at senior levels, and employment actions should not be permitted unless the pool of candidates includes Hispanics. Legislation and regulations should require Hispanic representation on policy and advisory boards.

2. The FCC and the federal government as a whole must strengthen affirmative action requirements and oversight throughout the broadcast industry, including the networks as well as broadcast facilities. This means improving oversight capacity and performance, either through the FCC or by providing special funding to another agency to take on this responsibility aggressively and consistently.

3. Broadcast industry entities must be given technical assistance and federal guidance in developing effective minority recruiting, training, and upward mobility efforts, including efforts directed specifically at Hispanics. Station-based education and training programs, cooperative education efforts, internships, and improved recruitment techniques are all needed. The FCC should provide technical assistance funding to encourage development and dissemination of model efforts, using Hispanic groups as contractors to help develop and present promising Hispanic-focused models.

C. Ownership

1. Efforts to increase minority ownership of broadcast facilities must be continued and strengthened, and should be expanded to cable and to non-broadcast entities. Special concern with financing issues is essential, as is specific attention to the need to encourage Hispanic ownership.

2. Improved mechanisms are needed to assure that Hispanic- and other minority-owned broadcast facilities remain financially viable. This means increased technical assistance and help in obtaining financing. While much of this assistance can be provided by agencies such as the Minority Business Development Agency, broadcast entities including the FCC, CPB, PBS, and NPR all need to increase their direct involvement in helping minority-owned broadcast entities.

D. Programming and Portrayals

1. A variety of efforts must be undertaken to eliminate stereotyping and increase positive portrayals of Hispanics, as well as the number of Hispanic newscasters and performers on both commercial and non-commercial television and radio. The FCC should establish and adopt a written plan of action, with clear and measurable objectives and timetables, to guide its minority portrayal activities, and the plan should be widely disseminated. It should specifically address the particular problems of Hispanics.

2. Funding should be provided to encourage community involvement with broadcast stations at a local level. Resources should be made available to Hispanic and other minority organizations to establish media consultation groups to work with local stations year round on programming and employment issues.

4. The national entities responsible for non-commercial broadcasting which act on minority programming, and the FCC offices which deal with programming issues, must recruit Hispanic staff to participate in their program reviews. Similarly, Hispanic consultants should be used more extensively for such reviews.

5. Increased federal resources should be made available to encourage the development and growth of Hispanic and other minority-owned production centers. Special efforts to assure the availability of financing for such entities are badly needed.

NCLR staff would welcome the opportunity to provide further, more specific consultation on particular issues or legislative alternatives. I thank the Subcommittee for the chance to share these concerns and suggestions.

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Mr. LELAND. Thank you, Mr. Yzaguirre.
Ms. Charren, Action For Children's Television.

STATEMENT OF PEGGY CHARREN

Ms. CHARREN. Thank you very much for the opportunity to speak again to this committee. I think by now you know that Action For Children's Television worries about the Nation's children in terms of TV and that includes just about every minority except perhaps the elderly and ACT worries about the stereotypic image of the elderly, too, as far as children are concerned.

Congress and the FCC are presently concentrating on how to deregulate television. The major excuse for deregulation is that alternative television technologies can now serve the public so well that we no longer need to worry about limited spectrum space.

Action for Children's Television would like to put forth the proposition that relying on alternative TV technologies will mean a reduction in service to disadvantaged children. Let me tell you why.

Home video recording devices—and the video tapes and video cassettes that can be bought or rented—do, indeed, provide a diversity of programs for children—in those families where concerned parents have the resources to afford such expensive TV equipment.

But those who cannot afford costly video recorders, tapes, and cassettes, who cannot afford pay cable channels, will have to continue to make do with over-the-air television, or at most basic cable services.

As the alternative technologies become more popular among people of privilege, the rich, the powerful, the advantaged will take care of their own children and forget about the problems of plain old television. They will not work to make TV better serve young audiences.

The problem is similar to that of segregated schools. Once the rich and powerful abandon the inner-city schools, they no longer work as hard for good education for every child.

The inner-city schools, then, are left to decline. I suggest that is exactly the direction we are going with television. We will have a segregated class system of entertaining and informing children in this country that will be a disaster for the future of a democratic society.

The major question before this body is this: What can the Government do to redress the grievances brought about by the failure of the marketplace to serve minorities and children?

Here are five suggestions. First, ACT believes the Government should encourage adequate TV service for children and teens. Television shapes the way all young viewers see the world; studies show that minority children get even more of their information and sense of the world from television than white children do.

Any deregulatory effort relating to the Communications Act—and I don't approve of deregulation, but in case we are in for it, I think that the deregulation should specify carefully formulated quantification standards that mandate minimum percentage time requirements for children's television.

Second, the Government should encourage diversity of role models onscreen by increasing diversity behind the scenes. ACT pe-

titioned the FCC to change its reporting policy of EEO Form 395, so that every year TV stations would have to file, by job title, information on race and sex.

We have asked the FCC to collect this data and to make the results known to the public. The way the FCC now reports EEO statistics hides the fact that television is still generally controlled by white males.

Third, we think the Government should encourage diversity of TV producers. It is our feeling that anything that reduces network control helps the public. Although the prime-time access rule and financial interest and syndication rule have not made as much difference as they should, we think the elimination of these rules will cause the problem of network control of TV images to get even worse.

Fourth, we think the Government should encourage a diversity of voices. Public access cable is only one of the most important ways in which cable differs from television. Public access is not only a kind of soapbox; it enables the public to produce programs, to have a voice.

Leased access is another way of reducing the power of the cable company to control the content of those 50 or 100 cable channels.

New technologies can provide alternative services. Minority preference in low power is one of the best ideas the FCC has come up with in a long time, for it can pave the way for television that truly serves neighborhood interests and needs.

But if low-power stations are allowed to be bought up by the kinds of big systems that now control TV, the chance for neighborhood television and narrowcasting will be lost.

Most important of all for the diversity of voices is the funding of PBS, the Public Broadcasting Service. It is outrageous that at the same time we are thinking of deregulating television and reducing service to the public on commercial television, we are making it very hard for PBS to get enough funds to provide the diversity it has so long provided.

PBS has developed most of the programs that target minority child audiences—shows like "Villa Alegre," "Righteous Apples," "Up and Coming," "Getting to Know Me." ACT believes that it is important to remember that these benefit white audiences as well as minority audiences.

Fifth, we think it is important to encourage parental control instead of censorship. We think there should be legislation to require cable lock-out devices to be provided free to any family that wants them, so that parents can monitor their children's viewing without impinging on the rights of other cable subscribers.

ACT also believes that legislation should mandate an inaudible electronic signal before and after children's commercials to make possible a device to help parents automatically turnoff children's commercials if they so desire.

We are taking broadcasters at their word when they say, "If you don't like the commercials, turn them off."

In closing, I would like to read a quote from "High School: A Report on Secondary Education in America," released last week by the Carnegie Foundation for the Advancement of Teaching:

In 1981, only 52 percent of all white families had school-age children—under 18 years of age. In contrast, 71 percent of all black and 75 percent of all Hispanic households had children in this category. . . . Of special concern is the fact that black and Hispanic young people are precisely those with whom our schools have been least successful.

While we get on with the important work of improving our Nation's schools, let us consider television as an important partner in educating the Nation's children. The benefits will accrue not only to blacks and Hispanics and other minorities, but to every child in the United States of America.

I would like permission to put in the record ACT's handbook, "Fighting TV Stereotypes," and a study that ACT commissioned called "Images of Life on Children's Television: Sex Roles, Minorities and Families," by Prof. F. Earle Barcus, which was published last week, just in time for this hearing, by Praeger Publishing Co.[1]

[1] "Fighting TV Stereotypes" may be found in the hearing, "Broadcast Regulation Reform," May 24, 1983, page 161, Serial No. 98-61, and the book, "Images of Life on Children's Television: Sex Roles, Minorities, and Families," may be found in the committee files or purchased from Praeger Publishers, New York, N.Y.

Testimony

of

PEGGY CHARREN

PRESIDENT, ACTION FOR CHILDREN'S TELEVISION

before the

SUBCOMMITTEE ON TELECOMMUNICATIONS,

CONSUMER PROTECTION AND FINANCE

Committee on Energy and Commerce

United States House of Representacives

September 19, 1983

The "scalp-hunting Indian"...the "Mexican bandit"...the "crotchety old man"... the "buxom black mama"...the "inscrutable Oriental"...the "helpless female"...all images that are now part of a more prejudiced past, right? Wrong. Minorities and women have been protesting these tired stereotypes for years. Yet they're all still there in living color on the TV screen, teaching children lessons about the world that countless speeches about racial harmony and sexual equality could scarcely correct.

If television is a window on the world, it is the only window through which many children can see people who are different from themselves: people of other races, religions, or ethnic heritages, people with different accents. Yet most television, especially commercial TV, closes the window on diversity.

What kind of message is TV sending by leaving those who are "different" out of the picture? What does it teach the young Chicano if the Hispanic characters on television are most often criminals? Equally important, what does it teach the young white child about Hispanics-- especially if he has no personal contact with them to help him form his own opinions?

Racial minorities, women, handicapped people, and the elderly are al under-represented on children's television. If they are shown at all, they are too

often portrayed in a stereotyped manner. What's more, a whole new generation is getting a skewed picture of the world from syndicated reruns and recycled movies that condone bigotry. And young people are spending 25 hours a week, on the average, in front of the TV, absorbing this cockeyed view.

Of course, television is not the only medium influencing children's perceptions of reality, and much of what young people watch is intended as fantasy. But children watch TV early and often, and from their viewing they take away a sense of the social order that colors their outlook on life.

By rarely treating minorities with respect, television teaches them that they really don't matter. And it teaches children in the white mainstream that people who are "different" just don't count. Worse still, by exporting American programming abroad, we are shaping the way billions of people around the world see us -- and the way they see themselves.

A 1981 study by Brigham Young University researchers showed that the proportional representation of minorities in TV comedies and dramas has actually declined over the last decade. Yet minorities are the fastest growing segment of the U.S. population. Why are so many of them all but invisible on TV?

If prime-time TV slights women and minorities, children's television offers an even more slanted view of society. In Representations of Life on Children's Television, Boston University Professor F. Earle Barcus concluded that in commercial programming specifically designed for children there are fewer minorities and females, and more stereotypes about them, than in adult television. The Barcus study, conducted for ACT in 1981, found that:

- Out of a total of 1145 characters in the programs studied, only 22% were female. They were portrayed as younger, more dependent, and less active than males.
- Only 3.7% of all characters were black, 3.1% were Hispanic, and 0.8% were Asian; one American Indian appeared. (By contrast, the latest

census counted 11.7% blacks, 6.4% Hispanics, 1.5% Asians, and 0.6% Native Americans among 226.5 million Americans.)

- Of all characters with speaking parts, 57.5% were white, and 33.8% were animals, robots, or other non-humans.

Whan an animal is more likely than a black to have a speaking role, it's time to take a closer look at the television our children are watching.

Filling the ranks of the television industry, from owners down, with a multitude of perspectives can only broaden TV's view of the world...for children, for everyone.

WNYC-TV is a good example of the increased sensitivity to community needs that can result from hiring minorities to decision-making positions. In 1981 the New York station appointed a black manager; since then, the percentage of black-oriented programming has risen to 30% -- more black TV fare than any other station in the country.

National Urban League Director Whitney Young once cited a scene on network television that epitomizes TV's exclusion of blacks. "I don't know how many of you know 125th Street in Harlem," Young said, "but it takes real genius to shoot a scene from 125th Street in Harlem and have nothing but white people in it."

An isolated cast of TV's failure to bring minorities into the picture? It hardly seems so. For unless they are specifically written into a script, minorities are unlikely to appear onscreen. But fair representation on TV isn't just a matter of counting black vs. white characters. It's also a question of how minorities are portrayed -- as the butt of jokes or as useful human beings, in segregated groups or as an integral part of society, in lead roles or as subservient sidekicks.

The TV industry points to its hiring record with pride: FCC statistics released in 1982 show that women made up 34.7% of all employees in broadcast

TV and 34.4% in cable. Minorities held 16% of all jobs in broadcast TV and 13.9% in cable.

Yet a closer look at the makeup of the TV labor force reveals that women and minorities are rarely seen where it counts: in the boardroom. They are, to use the U.S. Civil Rights Commission's term, mere window dressing on the set. Office and clerical duties are still considered women's work, with women holding 85.8% of all such jobs in commercial and public television, and 91.6% in cable. And while the FCC puts the number of broadcast "officials and managers" at 9.1% minority and 25.8% female, these figures mask the true picture about who makes the decisions in the television industry. For included in this top category are not just general managers and program directors -- who tend to be white males -- but also many of those with no real say in station policy, such as promotion directors and research directors (who are often minorities or females).

This employment imbalance is perhaps a natural consequence of the pattern of ownership of TV stations across the country:

- Of the 1042 broadcast stations operating in the U.S., only 18 are minority-owned.
- A 1982 survey of 288 broadcast stations found that women were principal owners of only eight.
- Only 20 cable companies, representing 45 to 50 of the country's 4,700 cable franchises, are minority-owned.

Minorities are even more scarce at the creative end of the TV structure. Research by the Black Anti-Defamation Coalition reveals that the average black TV viewer assumes that any show with a largely black cast is written, directed, and produced by blacks, and that blacks are reaping the profits. That is hardly ever the case. In 1980, the Writers Guild of America, West, reported 1,540 members working on a weekly basis in TV. How many were black? Four.

That is not to say that no one but a Native American can write about

the Indian experience, or that only the elderly should produce programs focusing on aging. But the more input minorities and women have, the more accurate TV's view of the world will become -- not just in entertainment, but in the news, where what gets reported, and how, is often determined by people who lack sensitivity to minority issues.

When television is good, it can be very, very good, encouraging racial equality, presenting women in leadership roles, showing gays, the elderly, and handicapped people as valuable members of society.

The Public Broadcasting Service has consistently led the way in fostering positive role models for children. While programming on public TV has its faults, and minorities and women are still underrepresented both onscreen and behind the scenes, PBS has come closest to television's most noble goal: serving the public interest.

Girls and boys of all backgrounds have benefited from PBS's commitment to cultural diversity. Unfortunately, federal funds, crucial in keeping public television alive, have been slashed. Without adequate funding, the outlook for continued excellence in public television programming for children is cloudy indeed.

Commercial broadcasters defend their programming decisions by maintaining that they must serve too broad an audience to cater to special interest groups. But good programming cuts across all boundaries -- color, sex, and ethnicity. After all, it's not only doctors who watch programs with a hospital theme. TV viewers of all backgrounds will tune in to well-made shows that focus on minorities or that showcase minority talent.

Occasional specials about race relations or feminism or elderly rights are fine, but they're simply not enough. Children need to watch news that better represents minority concerns, cartoons that reflect all the colors of the human rainbow, and live-action programs that enhance their lives. What's needed is a commitment to diversity in TV programming on a <u>regular</u> basis --

locally as well as nationally -- and to the time it takes for such programming to build an audience.

Although they can provide disenfranchised groups with more access to the medium, it's unlikely that the alternative technologies will solve TV's ills. The government cannot allow broadcasters to shuck off their responsibilities to young audiences, confident that the new forms of TV will pick up the slack. Cable can be costly; video discs and video cassettes, while increasing viewing options by allowing families and schools to program their own TV fare, involve expensive equipment. If much of the audience for minority programs cannot afford to bring the new technologies into the home, their potential for alleviating TV's distortions will be limited.

Low-power television may eventually prove to be one service through which minorities can have considerable impact, if the Federal Communications Commission remains faithful to its original plan to give preference to minority applicants for ownership, paving the way for neighborhood programming. Low-power stations can be built for a fraction of the cost of acquiring conventional TV stations, thus opening the door to increased media control for groups formerly denied access to TV ownership.

Television can be an effective voice in fighting TV stereotypes. But before that can happen, we all -- government and public alike -- must get involved.

The TV industry can:

- Increase diversity in programming of all kinds. Children need to see characters who just happen to be black or Hispanic, as well as dramas and documentaries that focus on racial issues.
- Hire and promote minorities and women, especially to decision-making positions.

- Establish recruitment and training programs and scholarships to open the doors in all branches of the field: writing, production, news reporting, management.
- Actively solicit programming ideas, scripts, and onscreen talent that reflect America's multiethnic, multicultural nature.
- Provide access to community groups to ensure a minority voice on cable, low-power, and local broadcast TV.

The business community can:

- Underwrite children's programs that reflect the interests and showcase the talents of minorities and women.
- Support public television as a valuable TV alternative.
- Fund education and promotion campaigns to develop new audiences and encourage community involvement.
- Pool resources to sponsor scholarships and recruitment and training programs to give the handicapped, women, and minorities a start in television.
- Help finance minority ownership of broadcast, cable and low-power stations and other TV technologies.

All of us can:

- Watch TV with our children and talk about the role models and stereotypes television provides.
- React to what children see on the screen. Call, visit, or write to station managers, producers, writers, and advertisers to applaud, criticize, or suggest new ideas. Encourage children to speak out as well.
- Become involved with cable in the community. Get in on the negotiations to make sure that children are served and that programming reflects local ethnic flavor and minority-group concerns. Urge young people to take advantage of the chance to make their own programming for public access channels.

Congress and the FCC are presently concentrating on how to deregulate television. The major excuse for deregulation is that alternative television technologies can now serve the public so well that we no longer need to worry about limited spectrum space. Action for Children's Television would like to put forth the proposition that relying on alternative TV technologies will mean a reduction in service to disadvantaged children. Let me tell you why.

Home video recording devices -- and the video tapes and video cassettes that can be bought or rented -- do indeed provide a diversity of programs for children... in those families where concerned parents have the resources to afford such expensive TV equipment. But those who cannot afford costly video recorders, tapes, and cassettes, who cannot afford pay cable channels, will have to continue to make do with over-the-air television, or at most basic cable services. As the alternative technologies become more popular among people of privilege, the rich, the powerful, the advantaged will take care of their own children and forget about the problems of plain old television. They will not work to make TV better serve young audiences.

The problem is similar to that of segregated schools. Once the rich and powerful abandon the inner-city schools, they no longer work as hard for good education for every child. The inner-city schools, then, are left to decline. I suggest that is exactly the direction we are going with television. We will have a segregated class system of entertaining and informing children in this country that will be a disaster for the future of a democratic society.

The major question before this body is this: What can the government do to redress the grievances brought about by the failure of the marketplace to serve minorities and children?

First, ACT thinks the government should encourage adequate TV service for children and teens. Television shapes the way all young viewers see the world; studies show that minority children get even more of their information and sense of the world from television than white children do. Any deregulatory effort

relating to the Communications Act should specify carefully formulated quantification standards that mandate minimum percentage time requirements for children's television.

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Fourth, we think the government should encourage a diversity of voices. Public access cable is only one of the most important ways in which cable differs from television. Public access is not only a kind of soapbox; it enables the public to produce programs, and that's important. Leased access is another way of keeping control of those 50 or 100 cable channels in more hands than that of the cable operator. We think that is an important idea for diversity.

New technologies can provide alternative services. It is therefore important to develop them. Minority preference in low power is one of the best ideas the FCC has come up with in a long time, for it can pave the way for television that truly serves neighborhood interests and needs. But if low-power stations are allowed to be bought up by the kinds of big systems that now control TV, the chance for neighborhood television and narrowcasting will be lost.

Most important of all for the diversity of voices is the funding of PBS, the Public Broadcasting Service. It is outrageous that at the same time we are

thinking of deregulating television and reducing service to the public on commercial television, we are making it very hard for PBS to get enough funds to provide the diversity it has so long provided. PBS has developed most of the programs that target minority child audiences: "Villa Alegre," "Righteous Apples," "Up and Coming," "Getting to Know Me," and ACT believes that it's important to remember that these benefit white audiences as well as minority audiences.

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In closing, I'd like to read a quote from "High School: A Report on Secondary Education in America," released last week by the Carnegie Foundation for the Advancement of Teaching.

> "In 1981, only 52 percent of all white families had school-age children (under 18 years of age). In contrast, 71 percent of all black and 75 percent of all Hispanic households had children in this category.... Of special concern is the fact that black and Hispanic young people are precisely those with whom our schools have been least successful."

While we get on with the important work of improving our nation's schools, let us consider television as an important partner in educating the nation's children. The benefits will accrue not only to blacks and Hispanics and other minorities, but to every child in the United States of America.

ACT's testimony is based on "Fighting TV Stereotypes: An ACT Handbook" by Cynthia Alperowicz of ACT.

Mr. LELAND. The Chair would now like to recognize Mr. Willis Edwards, who is president of the Hollywood chapter of the NAACP.

STATEMENT OF WILLIS EDWARDS

Mr. EDWARDS. Thank you very much, Mr. Chairman, for this opportunity to be represented and heard once again, but before I get started, an order of protocol. I would like to thank my Congressman, Mr. Waxman, for being here, as we do work very closely on these issues in California.

As of this moment, you have another generation of our Nation's children that is growing up with the same negative images of people of color that has been the standard throughout the history of the television industry.

Often the only thing that edged out the negative portrayals of minorities has been the other extreme of the industry's employment and casting practices that allowed for no images at all.

In the case of on camera portrayals, it is more the rule than exception that people of color will be limited to roles as sidekicks, helpers, or as comic relief.

To understand the root cause of the problem, at least two factors can be noted. One, access to the closed society of executives is disproportionately limited to white males who today, as in the past, are of such an overwhelming majority in the television industry as to negate the likelihood that the proper appreciation for the talents and abilities of minorities can be taught.

Two, this same fraternity justifies the absence of positive and plentiful starring roles for minorities by inferring that viewers would turn away from such portrayals, despite the fact that "Roots" is still one of the most watched productions in television history. Programing practices which we would like to think are past and gone are still with us.

These practices, we feel, must come to an end. As has become the custom for TV Guide, their September 10 issue highlights many of the new shows for the current season. With all due respect to the actors cast in the various roles whose abilities we are not questioning, one can still, nonetheless, shed light on some interesting factors.

Of those members of the new shows pictured, 17 of the 26 are all white. Only 8 of the 103 actors pictured are minority—7.7 percent.

It would also be appropriate to inquire why minority roles are limited to a boat attendant on the Mississippi, the boss' assistant, a black genie to a white master, a sidekick to a computer whiz kid, a sidekick to a manimal, and as a staff sergeant as opposed to being a captain.

Please take note that there are no Hispanics or Native Americans who are cast in any roles whatsoever, including Asians. In addition to which, although none of the aforementioned minorities are featured as the lead, minority Americans have constantly hoped that nonminority Americans would come to understand that this great Nation of ours could be even greater if the "isms" of sick minds were not allowed to continue to obstruct the progress that can be achieved if we work together.

All the while that we have been hoping and waiting for improvement in program content, the realization that we could take steps to speed up the rethinking process that our TV executives must undergo has been discussed and suggested more and more often.

Please be advised that the minority population of this Nation in and of itself constitutes an economic ebb and flow which far exceeds the entire national budgets of whole countries elsewhere in the world.

Many of the products advertised on our airwaves owe a significant percentage of its profits past, present, and future, to the buying power of those Americans who have to this point refrained from any organized economic muscle flexing.

The exclusion of minority expertise and interests must come to an abrupt end. This demand has not come too hastily, for we have waited.

It is thus not unwarrented, for we have been portrayed unfairly and this demand is not unjust for the facts speak for themselves.

The minority entrepreneur who has sought to supply the networks with programing can account for only .0086 percent of prime-time hours for the past 15 years. Quoting the "Rainbow Report," March 1983, "added to this, is the fact that 188 hours, 72 percent are comedy, musical, or variety shows . . . 88 hours of Flip Wilson, 18 hours of Redd Foxx, 22 hours of Bill Cosby; variety shows, 5 hours of Motown music specials and 1 hour from the Diana Ross Entertainment."

These are children growing up in this country without the reinforcement from television that allows them to mature properly with the knowledge that in the real world our doctors, generals, board members, and pilots are indeed in many cases black, Hispanics, Asians, or Native Americans.

It is long past the time when television should have begun to play its proper role in the prevention of erroneous stereotypical thinking.

It is time for Congress to do something about it and follow through on what legislation they do pass.

Thank you.

Mr. LELAND. Thank you, Mr. Edwards.

The next witness is Dr. J. Fred MacDonald from Northeastern Illinois University.

STATEMENT OF J. FRED MacDONALD

Mr. MACDONALD. Mr. Chairman and gentlemen of the subcommittee, I thank you very much for this opportunity to testify, and I respectfully request that my written testimony be entered into the record. I come here today not as a TV snob who wants to attack television and secretly foster a new appreciation for classical music and Shakespearian drama and maybe even reading. I come here as a qualified friend of television. I grew up on it. I like much of its product. I certainly appreciate the potential that it has as an informational and entertainment medium. But I am also painfully aware of its shortcomings, particularly with respect to its treatment of minorities and specifically based on the research and writ-

ing for my book I did, "Blacks and White Television" and television's attitude toward Afro-Americans.

I understand the mechanics of television. They are mechanics of business, they work with demographics, bottom-line profits, and they worry about attracting the largest possible audience. The fact it is a tripoly television is dominated by the CBS, ABC, NBC triad, because it is such we are really competing for one-third plus of the audience, thus broadcasting has in it certain inherent problems in terms of the representation of minorities.

I understand this and then I look at black America. If Afro-America were an independent nation it would be, based upon its GNP, the 23rd largest country in the world. There are 170 independent nations. Black America would be number 23, so it is rich and yet it is not served. It is also big. If it were an independent country it would be the 30th largest country in the world.

These are the things that television executives tell us they really appreciate, demographic size and financial wealth. We also know that blacks are brand-loyal. More than whites, who run to generic and house brands, blacks buy sponsored products. They watch more television proportionately than white America.

So what is the problem? They seem to fit into all the mechanical structures. Given all these qualifiers, is it not reasonable to expect television to provide honest, well-rounded, authentic, typical representation of Afro-Americans on network television? Should a consumer force richer than Nigeria, Portugal, Argentina, or Israel not anticipate programing as authentic and ennobling as these nations provide for themselves. Should a demographic unit which is larger than Australia, Greece, Romania, and the Republic of China, Taiwan, not anticipate that its TV programing will project honorable images of its men, women, and children in exactly the same way such programing exhibits white persons?

And if it were to appear anywhere on Earth, would we not expect it to develop in the United States of America, a nation founded upon principles of human dignity and human worth, of equality, freedom, and the like? In our understanding of world politics we would expect the Communist Russians to portray capitalistic Americans negatively in their national television. We would anticipate white South Africa to ridicule its subjugated black nationals on the television programing of the Republic of South Africa. Why should abuse of racial or economic minorities occur within the United States on network television?

Stereotypes are an integral part of the history of America. The minstrel show of the 19th century brought us the Toms and the coons, the mammies and the pickaninnies and the bucks and all those derisive images that white America needed to justify its subjugation of black America. How else can you justify the treatment of a human being unless you ridicule him so much in your culture that you know he is less than you? He is childlike, and until the independence after the Civil War, then he became a rascal, a dolt, a fool, someone who had to be looked after.

Those images still, refashioned, stylized, modernized, are what we see on television. We get the wild animal that Mr. T presents. We get the hip, flip, wise-guy, wise-cracking imagery that Rochester brought with Jack Benny and everybody since, all white Amer-

ica, thinks always sounds lovable. The Norman Lear and Bud Yorkin empire, a liberal empire, is based upon minstrel stereotypes. Over and over.

There was a time at the end of the sixties when it was not that way. Television has shown that it can produce imagery of blacks that is not racially derisive. There were "Mod Squads" and "Julias" and Bill Cosbys and "Room 222's" that gave us much more honest representation, but they are dead. With the white backlash, with the racist reaction of the late sixties they have died. And with the Presidencies of Nixon through Ford and Carter and especially with Ronald Reagan, where these kinds of attitudes apparently have been given their head, we see even less dignified representation.

Now, Hispanic America may have a bleak situation, but it has foreign language programing. It can draw from Peru, Argentina, Mexico, the soap operas that populate so much of UHF television in Spanish language channels. But where is black America? You cannot take a Nigerian program or a Ugandan program and put it on and expect Afro-America to understand it. White America has deracinated, cut the roots off of black America, and now will not even allow them to see themselves regularly and honestly on television.

If we are to understand the legislative direction that you might want to direct your energy—I would point to two. First of all, as white America moves with its affluence to cable and other uses of the video screen, black America is going to become proportionately a higher percentage of the free television audience. Surely network executives will appreciate that, advertisers will understand that. Already we can see in certain daytime soap operas that kind of breakthrough. Why not in "Dallas," "Falcon Crest," "Dynasty," and all the other great shows of the evening.

Once we have cable, when the inner cities have it, then we can have many channels, then we could have narrowcasting. And just as narrowcasting destroyed the racism of broadcast radio, narrowcasting television can hold potential to destroy the racism that is there in the triopoly of present day network television.

Thank you.

Mr. LELAND. Thank you, Dr. MacDonald.

The Chair would like to admonish the audience that demonstrations are not allowed in the committee hearing. But the Chair does respectfully understand the applause.

[Testimony resumes on p. 61.]

[The prepared statement of Mr. MacDonald follows:]

Testimony of: Dr. J. Fred MacDonald, Professor of History, Northeastern Illinois University, Chicago, IL 60625; author of Blacks and White TV: Afro-Americans in Television Since 1948. (Chicago: Nelson-Hall, 1983).

Before: House Subcommittee on Telecommunications, Consumer Protection, and Finance

Date: September 19, 1983

Television is a wonderful mechanism which informs and entertains hundreds of millions of Americanyevery evening. Through international distribution, moreover, American entertainment programs nightly fascinate hundreds of millions--even billions--of viewers around the world. The television industry is a multi-billion dollar enterprise employing many thousands of creative, hard-working professionals. It is a capitalistic success story--emerging from its infancy in the years following World War II, rising continuously to reach its contemporary financial peak. It is a competitive industry, strongly controlled by three corporations--ABC, CBS, and NBC--which seem constantly to be jockeying for ratings and bigger profits. It is a dynamic, exciting, challenging world which would seem to be meeting successfully the desires of its customers, the TV viewers.

Television is also a multifaceted business, the wellspring of which does not reside in any single dimension of its corporate or creative structures. While its motor force is the capitalistic imperative toward greater and greater profitability, what is seen ultimately on the video screen is affected by several substantial forces. The policies and attitudes of network-level decision-makers certainly affect TV programming. But so, to, do the policies and attitudes of the managers of local stations, even those with network affiliation. Audience tastes as registered in the shares-and-ratings statistics are powerful influences

upon what is seen. The Federal Communications Commission can be influential. Of major importance also are the several production companies which develop, cast, and film the shows which the networks telecast. Sponsors and advertising agencies affect final products. So, too, do writers, directors, and producers. Above all, however, what is presented on television is most determined by the nature of broadcasting in the United States and the triopoly which dominates TV.

Although ABC, CBS, and NBC own only fifteen stations nationally, they have organized in their networks the overwhelming majority of the country's VHF stations. Further, the programs which they show and reshow eventually via syndication become the programming of most non-network VHF and UHF outlets. The networks tend to think alike, buy series from the same production companies, follow each other in program directions, and when one network moves in a new direction and finds ratings success, the others quickly seek to reproduce this breakthrough. This situation in general is not necessarily a negative one.

Competing nationally for the largest share of the viewing audience, the three networks are concerned primarily with luring as many people as possible to their offerings. By attracting more viewers than the competition, a network and its stations can charge more money for commercial time sold. This is a simple, even mechanical, equation. But within a society whose history and contemporary reality are marked by chronic racism—with its operative segregation, discrimination, racial prejudice, and biased attitudes—the mechanics of TV broadcasting produce pernicious results. This is especially the case for Black Americans who have usually found American commercial television unresponsive, even debilitating to their cultural, political, psychological, and moral needs.

In many respects Afro-Americans possess the attributes which the business ethic of television claims are necessary for respect. They constitute a wealthy

consumer force within the United States, accounting in 1979 for more than $70 billion of the nation's $2.414 trillion GNP. While that figure is less than three percent of the total, if Afro-America were an independent country a GNP of $70 billion would make it the twenty-third richest nation on earth. Afro-America would be wealthier than Turkey, Norway, Indonesia, Denmark, Hungary, El Salvador, Guatemala, or Lebanon. It would be richer than any African state. Only two nations would be wealthier in South America; and only four Asia countries would be richer.

Still another figure which the television audience respects is the size of the constituency. Again, if Afro-America were an independent state—among the 170 independent nations of the world—it would rank number thirty in terms of population. There are more Black Americans that there are Canadians, Austrians, South Africans, Yugoslavians, or Czechs.

There are other factors which seem to insure that television would serve Black viewers with respect and dignity. Blacks are brand loyal. It is magic to the ears of sponsors to hear that while whites are flocking to generics and house brands, statistics prove that Blacks consumers prefer advertised brand-name products. Blacks also watch more television on a per capita basis than whites. While Blacks represent about twelve percent of the American population, they are one-quarter of the viewers of daytime soap operas. Black children watch more TV than their white counterparts.

Furthermore, in the scramble to find alternatives to network television, such as cable TV, videogames, computer usage, and the like, Blacks are becoming an increasing proportion of the audience for network "free" TV. As affluent whites and suburban cable subscribers abandon commercial video, Blacks in the inner cities where cable is not yet available or where monthly subscription fees are

more difficult to pay, remain constant in their dependence upon commercial television for information and entertainment.

Given all these qualifiers is it not reasonable to expect television to provide honest, well-rounded, authentic, and plentiful representation of Afro-Americans on network TV? Should a consumer force richer than Portugal, Nigeria, Argentina, or Israel not anticipate programming as authentic and ennobling as these nations provide for themselves? Should a demographic unit which is larger than Australia, Greece, Romania, or the Republic of China (Taiwan), not anticipate that its television programming will project honorable images of its men, women, and children in exactly the same way such programming exhibits white Americans? And if it were to appear anywhere on earth, would it not be expected to develop in the United States, a nation founded upon principles of human dignity and worth, equality, freedom, and the like? While in our understanding of the world's politics we would expect Communist Russians to portray capitalistic Americans negatively on their national television, or we would anticipate white South Africans to ridicule subjugated Black Africans on TV in the Republic of South Africa, why should such abuse of racial or economic minorities occur within the network video of the United States?

American television like much in American history has failed to meet the expectations of Blacks and the needs of ignorant whites. The history of the medium is replete with examples of derisive stereotyping offered as the only representation of Afro-Americans. We have seen the stereotypes thousands of times--Blacks as stupid, lazy, scheming, fat, wise-cracking, definitely inferior to whites, yet because of their powerlessness within American society, reliant upon the goodwill of sympathetic whites. It took twenty years before network television

allowed a Black man (Bill Cosby) to romantically kiss a Black woman (Janet MacLachlan) in an episode of I Spy in 1967. It took the high tide of the civil rights movement before the networks hired their first Afro-American newsmen in 1963. And it took a rash of inner city rebellions in the late 1960s until those networks employed more than just a token few--in this case, Blacks were hired to enter flaming ghettoes because white reporters feared for their lives, and network officials figured Black correspondents would not be injured covering such stories. Where were the Black cowboys when the Western inundated TV in the late 1950s and early 1960s? We know where the Black athletes were, but where were the Black sportscasters? The Afro-American detectives? The Black businessmen and businesswomen? The Black politicians? The Black mothers and fathers with their amusing offspring in the manner of My Three Sons, The Donna Reed Show, and The Adventures of Ozzie and Harriet, and the many many many others?

Television did not originate racial stereotyping. Long before Amos 'n' Andy filled TV with the images of inferior Blacks so necessary for whites to justify continued subjugation of Afro-Americans, Amos 'n' Andy on network radio was under attack by the NAACP and other civil rights groups. And long before that, there were the streotypes of the minstrel-show stage where doltish "Coons" tickeled the funny bones of white audiences, where hefty "Mammies" exhibited their commanding girth and the harranguing mirth, where cherubic "Pickaninnies" gave us lovable rascality, and pliant "Uncle Toms" reassured the dominant culture that despite the devastating effect its power was having upon Black society, there were "reasonable" folk ready to urge acceptance and offer prayers or songs as alternatives to "uppity" protest.

Blacks did not invent these stereotypes. They were the products of white racism—the fanciful acting out for white culture of the immature and subhuman characteristics it ascribed to the slaves and the sons and daughters of slaves whom it subjugated, abused, exploited, and then mocked as being less than the least white person. Certainly, by the time television emerged in the mid-twentieth century such stereotyping had been moderated, stylized, and refashioned. But the essence of this stereotyping remained: the relegation of an entire people to less than fully human representation, the cultural reflection of, and the justification for, the socio-political weakness of Afro-Americans in reality.

So Black actors learned from white vocal coaches to speak in minstrel-show accents, to pop their eyeballs in graveyards, and to act subordinately around white men, women, and children. Blacks learned to bounce a ball or sprint a lap for the TV cameras. But seldom were they asked to be part of a TV nuclear family (unless it was a white family for whom the Black character worked, or by whom a Black child had been adopted). Seldom did they portray people with social aspirations. What talents they were asked to demonstrate were usually those of the feet, hands, and vocal chords.

Ironically, in the dismal record of video and its relationship with Black America, there was a short-lived glimpse of what TV might have been had the networks responded to human dignity and not white racial prejudice. In the late 1960s there emerged, relatively speaking, a Golden Age for Blacks on television. As I have chronicled in greater detail in my book, Blacks and White TV: Afro-Americans in Television Since 1948, this was an uncommon time when commercial TV offered a multiplicity of series in which Blacks played substantial, non-stereotyped supporting roles, and in several major instances Blacks were the stars of the series. Some have criticized this era of I Spy, Julia,

The Mod Squad, The Bill Cosby Show, and Mission: Impossible as a misleading time when Blacks were blanched, and Julia Baker, Barney Collier, and Chet Kincaid were just "too white" to last. Others, such as Ruby Dee who was quoted at the time in The Saturday Evening Post (November 30, 1968), were less critical of the roles offered, but more leary of the motivations of white network TV. "I think most Black actors who've been at this long enough don't trust trends," noted Ms. Dee of the wave of mature video representations. "We're the most commodity-conscious nation in the world, and the Black man is the commodity this year. If Black people sell, they'll be back. If they don't, they won't."

Relative to what had preceded it, this was a Golden Age. It did allow Blacks to portray more fully-rounded, human characters. There was Black love and Black family now on TV. There was Afro-American patriotism, bravery, and ingenuity. There were Blacks in comedy shows, but the old stereotypes of minstrelsy were gone. There was no Coons, Mammies, Pickaninnies, or Uncle Toms in The Bill Cosby Show, Rowan & Martin's Laugh In, and Room 222.

In retrospect, however, there were signs that this Golden Age was not fashioned of 24-karat network intentions. Primarily the product of the civil rights era and the Great Society politics of President Lyndon Johnson, the Golden Age quickly tarnished as "the white backlash" replaced the sing-together-pray-together era of the civil rights movement. The elections of 1968 brought "the silent majority" and its candidate Richard M. Nixon to power. Relevancy and equality lost their ratings. And as viewers demanded more traditional imagery, network TV quickly accomodated. The Flip Wilson Show helped to revive the race joke. It was topped in the Nielsen ratings only by the racial hyperbole of Archie Bunker as Norman Lear and Bud Yorkin began to erect their liberal minstrel empire upon the debris of the Golden Age.

The record of American television is not one of unmitigated racial stereotyping. In all fairness there have been triumphs. The two Roots miniseries seemed to promise a new deal for Black representation. But the dismal failures of James Earl Jones in Paris, Louis Gossett in A The Lazarus Syndrome, and Ben Vareen in Tenspeed and Brown Shoe quashed those hopes. There have been several recent attempts at non-stereotypical programming. Fame, however, was poorly scheduled and promoted by NBC. The New Odd Couple avoided racial cliches, but was just not humorous. And The Powers of Matthew Star featured Louis Gossett in a "faithful friend" role, but he was a bright, affable costar whose intelligence was indispensable to the series. The series was not indispensable, however, to NBC.

As we face the new 1983-1984 TV season where do we stand with reference to stereotyping and the use of Blacks in TV programming. Two recent studies (see attached pages) clearly indicate the paucity of entertainment roles for Black actors, and the diminishing of Black representation on network and local news programming. Further, the stereotypes abound while serious racial representation is scarce. Except for familiar comedic stereotypes—in both old programs like The Jeffersons, Gimme a Break, Diff'rent Strokes, and Benson; and in new shows such as Webster and Just Our Luck—there are few characterizations of Blacks in fully human terms. For every Stan Shaw acting in The Mississippi, the ratings show audiences prefer the brute-animal force of B.A. Baracus in The A Team.

Unlike Hispanic-Americans, Black Americans have no foreign sources for dignified, quality TV programming. For the most part, Afro-Americans are at the mercies of white network officials. In this time of deregulation and Presidential indifference to the image of Blacks on television, it seems highly unlikely that government will be able to offer the leadership which resulted in that Golden Age

fifteen years ago. There seem to be few, if any, legal recourses; and moral suasion has been historically ineffective. But there are two bright spots. And they appear because of the changing structure of TV, not because of any moral conversions in New York City or Hollywood. Legislators seeking directions for their energies should closely scrutinize the following developments:

I. As white switch their TV tastes to MDS, cable, pay-per-view, videogames and the like, Blacks are becoming a proportionally higher and more critical fraction of the audience for network TV. Already in daytime soap operas (All My Children, Another World, The Edge of Night) many well-developed, human roles have been given to Black actors. While prime time "soap operas" like Dallas, Falcon Crest, and Dynasty are still lily-white, the changing demographics of TV audiences should make for strategic reappraisals by networks and production companies.

II. When most major cities are wired for cable and inner city Blacks are able to buy cable service, the narrowcasting potential of the medium should make possible improved Black programming. There could develop Black-owned companies producing and airing Black-oriented programs. With dozens of channels competing for ratings, the Black population will represent a force with which to reckon. I anticipate non-Black programmers to appeal to the Afro-American viewer with appealling, mature video fare. Much as the multiplicity of radio stations weakened network radio and allowed narrowcasting according to formatr and demographic units, cable television should allow for a similar weakening of ABC-CBS-NBC control, and the emergence of television suitable to a wider range of tastes and moral convictions.

from Variety — April 6, 1983 — p. 1

Casting Report By SAG Shows Minorities Lose

By DAVID ROBB

Hollywood, April 5.

Longstanding complaint that a casting color-barrier has largely relegated minority actors and actresses to the back of Hollywood's bus is receiving strong statistical support from a heretofore confidential Screen Actors Guild report on minority hiring.

The SAG survey, titled "Minority Casting Summary Report," covers all casting in motion pictures and dramatic primetime television for a 15 month period from July 1981 through September 1982, and offers dramatic proof that blacks, Hispanics, Asians and American Indians continue to receive considerably smaller pieces of the casting pie than their Caucasian counterparts.

Blacks, for instance, though they comprise 11.7% of the American population (based on 1980 U.S. Census Bureau figures), make up only 7.4% of the Screen Actors Guild, and are cast in less than 5% of all motion picture and dramatic primetime tv roles — less than half of what their population would warrant if casting were conducted on a purely statistical or quota basis.

The statistics are even worse, however, for black women. The SAG figures show that black women, who account for more than 12% of the country's female population, were cast in only 5.7% of all roles available to women, and were cast in less than 4% of all the leading roles available to women — less than a third of the leading roles their numbers would warrant statistically. Put another way, had black women been cast proportionate to their percentage of the population, there would have been more than 500 leading roles starring black women in films and dramatic primetime tv instead of the 169 roles they actually garnered during this particular 15-month period.

Figures for black male actors are only slightly less dim, with black males pulling down 5.8% of all lead roles available to men, and a dismal 3.9% of the supporting roles.

Only 10 Cross 50G Mark

Perhaps an even more telling figure is the SAG statistic which shows that only 10 black actors and/or actresses in SAG earned more than $50,000 in 1980, compared to the 312 white actors who earned more than $50,000, 82 of whom earned in excess of $100,000.

Coincidentally with the 1983 Academy Awards presentations next week, it's also noted that out of more than 1,000 actors and actresses nominated for Oscars in the Academy's 55-year history, only eight nominees have been black.

Hispanics (6.4% of the U.S. population) fared little better than blacks, per the report, receiving less than 3% of all acting roles in pics and primetime. This is partly mitigated, however, by the fact that Hispanics only make up 3% of SAG's membership — roughly equivalent to the percentage of roles they obtained.

The Old Catch-22

This, however, brings up the question of why minorities are under-represented in SAG. There are any number of theories, but the prevailing one is that a form of de facto discrimination is at work. This because SAG requires some past motion picture or tv experience (in another performers' union) to get into SAG (or a producer's promise of same).

Since there are fewer of these jobs and/or job promises to go around relative to their numbers, minority newcomers are faced with an even steeper uphill climb getting into SAG than their white counterparts.

Only seven SAG Hispanic actors and/or actresses earned more than $50,000 in 1980, and only 19 Hispanics earned more than $25,000, compared to the 931 white actors/actresses who topped $25,000 that year.

Hardest hit in the Hispanic community are women, who garnered only 1.6% of all leading roles available to women — this despite the fact that they make up nearly 6.3% of the U.S. female population.

Least discriminated racial group (at least statistically) would appear to be Asian/Pacific Islanders, who make up about 1.5% of SAG and of the U.S. population, and who held 1.7% of all parts during the timeframe of the study. Lead roles for Asian/Pacifics, however, were considerably less than would be their quota, with Asian/Pacific actresses taking 5% of lead roles available to women, and Asian/Pacific actors taking less than 1% of the lead roles available to men.

Indians Fare Poorly

For American Indians (.6% of the U.S. population, 3% of SAG), there were no leading parts for women, though there were 17 supporting actress roles logged. This represents .3% of all supporting actress jobs available, roughly equivalent to their percentage in SAG, but half their percentage of the population. Lead and supporting roles for American Indian males were both nearly equal to their percentage of the population, however.

Caucasians, who make up 83.2% of the population and about 87% of SAG, held down about 87% of all the acting jobs, with 89.8% of all leading men's roles going to whites, and 93.5% of all leading women's roles going to same.

from Variety – April 13, 1983 — p. 2

Survey Shows Women Gaining In B'cast News; Minorities Falter

Women currently make up 31% of all broadcasting news personnel, having made substantial gains over the past decade, while minorities in such jobs have remained at a fairly constant level, according to a study released by the Radio-Television News Directors Assn.

According to the study, women worked in 57% of the country's tv newsrooms in 1972. This figure had swelled to 97% when the survey was initiated last summer, the RTNDA says. During the same period the percentage of radio newsrooms that employ women increased from 20% to 59%.

For minorities, however, the story is somewhat different. Minorities were represented in 60% of tv news operations in 1972, a figure which has grown to only 72% today. In radio, the study shows, the percentage of stations that employ minorities increased from 20% in 1972 to only 21% in 1982.

Women currently are working as news directors at 8% of all television stations, while minorities hold such jobs in only 2% of national markets. In radio, women news directors account for 18% of the markets, while minority news directors were found in 4% of the markets. "About 1% of all women, compared to 5% of all men, in tv news are news directors," the study states.

As for the broadcast news force in general, 63% of all employes are non-minority men according to the survey; 27% are non-minority women; 6% are minority men and 4% are minority women. These figures reflect slight increases in non-minority women and decreases in minority men and women over the past ten years.

TV anchorwomen were employed at 50% of the nation's stations in 1972 compared to 92% of stations in 1982. In radio, women were doing newscasts on 15% of commercial radio stations in 1972 compared to 55% in 1982.

Women represented 11% of all tv anchors in 1972, while that number increased to 36% in 1982. Women radio newscasters increased from 6% in 1972 to 27% in 1982, according to the survey.

14% Minority

Minorities account for 14% of the tv news force, the study says, and nearly nine of every ten tv news operations in the top 100 markets include minorities. By comparison, in markets 101-150, fewer than two-thirds of the tv stations employ minorities, and fewer than half of the 151-200 markets employ minorities.

Blacks are the predominant minority, the study says, numbering 69% of minority tv newspersons. Hispanics constitute 20%, Asians 8% and Native Americans 3% of tv newspersons. In comparison, minorities in radio include 70% blacks, 21% Hispanic, 6% Native American and 3% Asian.

Mr. LELAND. The Chair now would like to recognize Mr. Arnoldo Torres, who is with the League of United Latin American Citizens. Welcome, Mr. Torres. We thank you for your participation.

STATEMENT OF ARNOLDO S. TORRES

Mr. TORRES. Thank you very much, Mr. Chairman. For the record, my name is Arnoldo Torres. I am the national executive director of the League of United Latin American Citizens, the largest and oldest Hispanic organization. We very much appreciate the opportunity that this subcommittee provides us with in coming to you today to discuss access to the media by minorities.

There have been many interesting points made, especially by the previous gentleman, Dr. MacDonald, who I have some disagreements with, but we can get into that in a moment.

With regard to the media, the power of the media is a tremendous power. It is, better yet it provides our society with information of what is around them presently and whether they can adjust to what is going to be around them in the future. Therefore a household spending as much time as they do before a television tube, it will reflect more or less the way that individual or household will view society. As the Nation's fastest growing minority in the country, the portrayal of Hispanics by the major networks will have a direct effect on insuring that Hispanics receive the equal protection and equal justice provided by our laws. The negative role given to Hispanic actors and actresses further ingrains the stereotypes that exist in our society. Further, these negative role models provide bad influences on Hispanic children to follow as they grow and strive to become productive members of our society.

There was a study on March 23, 1983, of the 17 programs that were surveyed by Corpus Christi State University at our request:

Of the 17 programs prime time, 9 out of the 263 characters portrayed were Hispanic;

Excluding "Hill Street Blues," Hispanics equaled 5 out of 232 characters portrayed;

"Hill Street Blues" accounted for 44.4 percent of the number of Hispanics portrayed on television;

The percentage of Hispanics in major roles was 2.2 percent 2 out of 92. "Hill Street Blues" and 9 to 5.

Four out of nine were minor roles. Two were cooks "Archie's Place," one a maid "Dallas," and one a gang member "Hill Street Blues."

I think the Congressman from Dallas, Tex., would confirm our contention that in Dallas it is pretty hard not to see a Hispanic in the streets, and in Dallas I think they are more than just maids. However if you watch the "Dallas" program we are lucky if we are a maid. We are not even ranch hands. They have even negated the stereotype of being farmworkers.

In a study in 1981 conducted by public advocates of the three major networks only 1 percent of the characters presented were Hispanic 37 of 3,546. Only 11 Hispanics were allowed to speak even one word. Almost two-thirds who spoke 7 of 11 were portrayed as negative or criminal types. All Hispanics portrayed by ABC, for example, were portrayed as inmates at a prison system.

It is conceivable that these negative roles could have been avoided had there been Hispanics in key policymaking positions within the networks' hierarchy, but Hispanics are hard to find.

We have another study of the three networks insofar as their hiring of Hispanics. I will not go into detail.

What is disheartening about these statistics is that these networks have offices in cities with heavy concentrations of Hispanics and numerous Hispanic media organizations.

Nonetheless it would be unfair for us not to say that there is some progress being made. Last year at about this time the League supported the repeal of the syndication rule in an attempt to show a good faith effort to work with the networks to try and improve their ability to portray Hispanics on and off the camera in a much better light. That effort on our part bore very little fruit. In fact, some of the people, in fact a Mr. Garry Hymel [phonetic], who worked for the Speaker of the House at one time, representing the networks indicated to representatives in the network world that "the Hispanics were sewn up", that "they were in our pocket". They were going to support the syndication rule. The League will be announcing October 1 somewhat of a different perspective on that position, and based on a study that we will be releasing at that time will indicate exactly why the perspective has somewhat been altered, but it is important to understand when you look at the media, for the media industry is like President Reagan insofar as just beginning to discover Hispanics. It is interesting. There is some progress being made.

However, Mr. Reagan and other public servants are held accountable every 4 years or 2 years, whenever the elections may be. The media industry unfortunately only becomes more insulated every year. There is no EEOC law covering them, in all honesty. In fact, with all due respect to the members of this subcommittee, this Congress has been totally irresponsible in aggressively going after the media and making sure that it is doing a better job of trying to hire Hispanics, of trying to hire other minorities, and of trying to make sure that they portray minorities and women in a much more positive and true light. And it is not necessarily an indictment that I make of this subcommittee or of this Congress, but nonetheless, there is some lack of aggressiveness that has not come from this body.

If I may provide you with some examples of the progress that the media feels they have made. We had the opportunity to meet with one of the networks and their vice-presidents in New York. After having gone to a media conference in California in which they were exposed to a number of Hispanics at the local level, we met with them about 2 months afterward and they told us that progress was being made. When we asked them how many Hispanics they had hired, they could not tell us that because they did not break those statistics out. We had the vice president in charge of management and affirmative action there. But they did tell us that in programing, progress had been made, for when they make television movies they encouraged their producers to shoot minorities who may be out in the general area, so they encouraged them to shoot them as extras. That is the sensitivity that this one network had.

One network, when we called and asked them why they had not shown Hispanics on for example "Good Morning, America," their response was to tell us that they were going to have Jose Feliciano on the following week, and was that Hispanic enough for us?

Yes, ladies and gentlemen, progress is being made. But progress in the eyes of people who really do not understand minority America or have no desire to truly understand the predicaments that they put us in. But just to look at the electronic media and exclude the print media is analogous to covering a ruptured artery with a Johnson & Johnson band-aid, for just like producers and directors, writers, reporters, and editors are biased and view life with a cultural stand. They write what they know, feel, and sense. While Hispanics represent 8 percent of the population, they represent 1.3 percent of the reporters and editors working on the Nation's general circulation dailies.

It would be ideal for us to rectify the exclusionary practice in the electronic media through reason versus a legislative solution. We hoped that through our meetings with the networks for over a year that that progress and that effort would be accomplished.

In the event that legislation is needed, our concern is that an administration such as the present one would only deemphasize the corrective effort that this legislation would try and have.

In conclusion, Mr. Charles Ericksen of Hispanic Link News Service stated it best in a 1982 article for Perspective magazine on Hispanics in the newsroom. Although it refers to print media, it applies here.

It should come as no news that, with its broad first amendment protections, the press has awesome powers in our society. Reporters, editors, and publishers decide what and who makes news. And because they are overwhelmingly white males, these decision-makers have, with notable exceptions, led newspapers to present distorted views of minorities and women.

We would make the following recommendations in an attempt to create more access of minorities to the media industry. First, this subcommittee should conduct thorough investigations of the industry and its discriminatory practices of minorities on and off the camera; Second, that this subcommittee seriously review and alter the role of the FCC in dealing with minority access to the media industry; and third, that PBS be strengthened, but let us not put anyone in the media above anyone else.

PBS, sure, they are the liberal group. They are the ones that as "Saturday Night Live" says are competing with NBC and have changed their colors. But they have a lot of problems when it comes to hiring Hispanics. All you have to do is talk to some of those people over there and they will hang up on you if you do not agree with what they are saying. So let us not color anybody better than the other.

This industry is in need of a major alteration. Let us not stop simply with the networks. We have got to go to the studios, to the advertising agencies. No one is above improvement, certainly not in the media industry.

I thank the chairman and the members of the subcommittee and I would like to make one last point. The gentleman to my right indicated that Hispanics have Spanish television and that that is a

reasonable alternative to network programing—that there is another alternative, in other words. I believe that to be correct to some extent. This is somewhat of an alternative as compared to what the black community may have. But let us not give that—let us not have that be a reason for not moving as aggressively in dealing with the networks and the studios with regard to their inability to deal with minorities, especially Hispanics. Let us not have that be an excuse for any network or studios failure to address the problems of Hispanics in the media.

I thank the chairman, a very good person who is concerned about Hispanics, since he has a lot of them in his district. I hope that I can come back in the future and discuss this and other issues with him.

[Testimony resumes on p. 77.]

[The prepared statement and attachments of Mr. Torres follow:]

GENERAL ACCESS IN THE MEDIA

PRESENTED BY

ARNOLDO S. TORRES
NATIONAL EXECUTIVE DIRECTOR

GOOD MORNING, MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER PROTECTION AND FINANCE. MY NAME IS ARNOLDO S. TORRES, I AM THE NATIONAL EXECUTIVE DIRECTOR OF THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), THIS COUNTRY'S OLDEST AND LARGEST HISPANIC ORGANIZATION WITH OVER 100,000 MEMBERS ORGANIZED IN 44 STATES OF THE UNION. WE VERY MUCH APPRECIATE THE OPPORTUNITY TO COME BEFORE YOU TODAY AND PRESENT OUR CONCERNS REGARDING LEGISLATION THAT WOULD DEREGULATE THE BROADCAST INSUDTRY AND QUANTIFY THE LEVELS OF PUBLIC INTEREST PROGRAMMING REQUIRED BY A BROADCASTER IN CERTAIN PROGRAM CATEGORIES.

THE IMAGES PORTRAYED ON TELEVISION DURING PRIME TIME HOURS HAVE A LASTING EFFECT ON THE ATTITUDES, PERCEPTIONS AND PREJUDICES OF THE AMERICAN PUBLIC. NUMEROUS STUDIES AND REAL LIFE INSTANCES HAVE BEEN DOCUMENTED DETAILING THE CHILLING EFFECT TELEVISION HAS ON YOUNG AND OLD ALIKE. THEREFORE WITH A HOUSEHOLD SPENDING ONTHE AVERAGE SIX HOURS A DAY WATCHING TELEVISION WHAT IS PRESENTED ON THE "TUBE" WILL REFLECT THE WAY THAT INDIVIDUAL AND HOUSEHOLD WILL VIEW SOCIETY.

AS THE NATION'S FASTEST GROWING MINORITY IN THIS COUNTRY THE PORTRAYAL OF HISPANICS BY THE MAJOR NETWORKS WILL HAVE A DIRECT EFFECT ON INSURING THE THAT HISPANICS RECEIVE THE EQUAL PROTECTION AND EQUAL JUSTICE PROVIDED BY OUR LAWS. THE NEGATIVE ROLE GIVEN TO HISPANIC ACTORS AND ACTRESSES FURTHER INGRAINS THE STERECTYPES

THAT EXISTS IN OUR SOCIETY. FURTHER THESE NEGATIVE ROLE MODELS PROVIDE BAD INFLEUNCES ON HISPANIC CHILDREN TO FOLLOW AS THEY GROW AND STRIVE TO BECOME PRODUCTIVE MEMBERS OF OUR SOCIETY.

A STUDY DONE BY STUDENTS AT CORPUS CHRISTI STATE UNIVERSITY EVALUATED TELEVISION PROGRAMS APPEARING IN THE TOP TWENTY OF THE PUBLICATION BROADCASTING TO RECORD THE NUMBER OF HISPANICS OBSERVED. THE STUDY OBSERVED:

-OF THE 17 PROGRAMS 9 OUT OF 263 CHARACTERS PORTRAYED WERE HISPANIC;

-EXCLUDING HILL STREET BLUES HISPANICS EQUALED 5 OUT OF 232 CHARACTERS PROTRAYED;

-HILL STREET BLUES ACCOUNTED FOR 44.4 PERCENT OF THE NUMBER OF HISPANICS PORTRAYED ON TELEVISION;

-THE PERCENTAGE OF HISPANICS IN MAJOR ROLES WAS 2.2 PERCENT (2 OUT OF 92 HILL STREET BLUES AND 9 TO 5.)

-FOUR OUT OF NINE WERE MINOR ROLES. TWO WERE COOKS (ARCHIE'S PLACE) ONE A MAID (DALLAS) AND ONE A GANG MEMBER (HILL STREET BLUES)

IN A 1981 STUDY BY PUBLIC ADVOCATES OF THE THREE MAJOR NETWORKS ONLY ONE PERCENT OF THE CHARACTERS PRESENTED WERE HISPANIC (37 OF 3546). ONLY 11 HISPANICS WERE ALLOWED TO SPEAK EVEN ONE WORD. ALMOST TWO-THIRDS WHO SPOKE (7 OR 11) WERE PORTRAYED AS NEGATIVE OR CRIMINAL ROLES. ALL HISPANICS PORTRAYED BY ABC, FOR EXAMPLE, WERE PORTRAYED AS INMATES AT A PRISON SYSTEM.

IT IS CONCEIVABLE THAT THESE NEGATIVE ROLES COULD HAVE BEEN AVOIDED HAD THERE BEEN HISPANICS AS KEY POLICY-MAKING POSITIONS WITHIN THE NETWORKS HIERARCHY BUT HISPANICS ARE HARD TO FIND.

ABC: As of 1980, only 3% of ABC's personnel at its headquarters in New York, Los Angeles, and Washington, D. C. were Hispanic (104 of 3,520).

Upon information and belief, less than one percent of ABC personnel in decision-making positions are Hispanic and less than one percent of ABC personnel earning above $40,000 are Hispanic.

An example of ABC's exclusion of Hispanics is that less than one percent of its non-clerical personnel at the D.C. headquarters was Hispanic as of 1980 (2 of 243).

CBS: Less than 3% of its non-clerical employees as of 1980 were Hispanic at its headquarters in New York, Los Angeles, and Washington, D. C. (91 of 2,310).

Less than one percent of CBS personnel in decision-making positions are Hispanics and less than one percent of CBS personnel earning above $40,000 are Hispanic.

Only two of its 160 employees in Washington, D. C. were Hispanic, including only 1 of 21 in news.

NBC: Only 3% of NBC's non-clerical employees as of 1980 were Hispanic at its headquarters in New York, Los Angeles, and Washington, D. C. (89 of 2,831).

Less than one percent of NBC personnel in decision-making positions are Hispanics and less than one percent of NBC personnel earning above $40,000 are Hispanic.
In Washington, D. C. only 1 of its 131 employees was Hispanic.

WHAT IS DISHEARTENING ABOUT THESE STATISTICS IS THAT THESE NETWORKS HAVE OFFICES IN CITIES WITH HEAVY CONCENTRATIONS OF HISPANICS AND NUMEROUS HISPANIC MEDIA ORGANIZATIONS.

BUT TO JUST LOOK AT THE ELECTRONIC MEDIA AND EXCLUDE THE PRINT MEDIA IS ANALOGOUS TO COVERING A RUPTURED ARTERY WITH A JOHNSON & JOHNSON BAND AID. FOR JUST LIKE PRODUCERS AND DIRECTORS, WRITERS, I.E., REPORTERS AND EDITORS ARE BIASED AND VIEW LIFE WITH A CULTURAL STAND. THEY WRITE WHAT THEY KNOW, FEEL, AND SENSE. WHILE HISPANICS REPRESENT EIGHT PERCENT OF THEPOPULATION THEY REPRESENT 1.3 PERCENT OF THE REPORTERS AND EDITORS WORKING ON THE NATION'S GENERAL CIRCULATION DAILIES.

IT WOULD BE IDEAL FOR US TO RECTIFY THE EXCLUSIONARY PRACTICE IN THE ELECTRONIC MEDIA THROUGH REASON VERSUS A LEGISLATION ENFORCING REASONS AND JUSTICE. WE HOPED THAT THROUGH OUR MEETINGS WITH THE NETWORKS THIS WILL BE ACCOMPLISHED.

IN THE EVENT THAT LEGISLATION IS NEEDED OUR CONCERN IS THAT AN ADMINISTRATION SUCH AS THE PRESENT ONE, THAT DOES NOT AGREE WITH OUR VIEWS ON AFFIRMATIVE ACTION, WILL ATTEMPT TO REPEAL THE GAINS PROVIDED BY A NEW LAW.

IN CONCLUSION, MR. CHARLES ERICKSEN OF HISPANIC LINK NEWS SERVICE STATED IT BEST IN A 1932 ARTICLE FOR PERSPECTIVE MAGAZINE ON HISPANICS IN THE NEWSROOM. ALTHOUGH IT REFERS TO PRINT MEDIA, IT APPLIES HERE.

"IT SHOULD COME AS NO NEWS THAT, WITH ITS BROAD FIRST AMENDMENT PROTECTIONS, THE PRESS HAS AWSOME POWERS IN OUR SOCIETY. REPORTERS, EDITORS, AND PUBLISHERS DECIDE WHAT AND WHO MAKES NEWS. AND BECAUSE THEY ARE OVERWHELMINGLY WHITE MALES, THESE DECISION MAKERS HAVE, WITH NOTABLE EXCEPTIONS, LED NEWSPAPERS TO PRESENT DISTORTED VIEWS OF MINORITIES AND WOMEN."

THANK YOU

REPORT ON HISPANICS IN MAJOR TELEVISION PROGRAMS

By

Robert R. Bezdek
Melody Cooper
Carolyn Espeseth
Belma Garcia
Vicki Hoff
Tammy Holbrook
Glen Holloway
Jacqueline Soliz
Majorie Soni
Sheila Spearman
Eliberto Villarreal

March 23, 1983
Mr. Tony Bonilla
LULAC National President

At the request of Mr. Tony Bonilla, Corpus Christi State University students in Political Science 303, Contemporary Political Analysis, agreed to view television programs and record the number of Hispanics observed. This report deals with the methodology, findings, and conclusion of this class project.

METHODOLOGY

This section deals with definitions and procedures used to insure the scientific nature of this project.

The students and the professor had to agree on several decisions. First, viewing of programs began in the latter part of January, 1983, with the overwhelming majority of the programs being viewed and coded in February. Second, since resources, especially time, were limited, we had to restrict the number of programs viewed. The first decision was to attempt to view programs that were established and that also enjoyed a certain level of popularity. Consequently, we decided to restrict our evaluation of programs to those generally listed in the top twenty of the publication, Broadcasting. Another decision was to exclude programs that either involved special events, such as the superbowl, a special series ("The Winds of War"), or involved a variety of items, such as "Real People," "60 Minutes."

As a result of these criteria, we restricted our programs to the following seventeen listed in alphabetical order:

1. Archie Bunker's Place
2. Dallas
3. Dukes of Hazard
4. Dynasty
5. Falcon Crest

6. Fall Guy
7. Gloria
8. Hill Street Blues
9. Jeffersons
10. Knots Landing
11. Love Boat
12. Magnum P.I.
13. Mash
14. Newhart
15. 9 to 5
16. Simon & Simon
17. Three's Company

All of these programs were viewed and coded by at least two students. Any differences between the coders were reconciled in a class discussion of the program involved. We would like to point out that differences in coding were minor. To facilitate the coding procedure, we developed a form which aided us in coding several categories:

1. Race and Ethnicity
2. Sex
3. Acting role which must include some speaking (Major, Support, and Minor)

When a particular program was watched on different occasions, the totals were added and then averaged for each program. For example, if at least two coders watched Dallas on three, different dates, the total number of actors was divided by three. We rounded off to the

nearest whole number.

FINDINGS

When we added up the total number of actors for the 17 programs chosen (see Table 1), we found that nine (9) out of 263 were Hispanic, which is 3.4 percent of the total. However, if we left out Hill Street Blues, the total was five (5) Hispanics out of 232, which is 2.2 percent. In short, one program accounted for 1.5 percent (4 out of 263) of the total Hispanics viewed for the 17 programs chosen. In other words, four (4) out of the total of nine (9) Hispanics observed or 44.4 percent appeared on Hill Street Blues.

TABLE 1

PERCENTAGE OF ACTORS ACCORDING TO SEX, ROLE, RACE AND ETHNICITY

	MALE (N=170)			FEMALE (N=93)		
	MAJOR	SUPPORT	MINOR	MAJOR	SUPPORT	MINOR
WHITE	17.5	19.4	20.5	13.3	9.1	8.7
BLACK	1.9	1.9	0	1.1	0.8	0.4
HISPANIC	0.4	0.8	1.1	0.8	0	0.4
OTHER	0.4	0.4	0.4	0	0	0.8

(Total N=263)

These total figures could be misleading, especially if one thinks that Hispanics had major acting roles. For example, we found one major role for a Hispanic in Hill Street Blues and in 9 to 5. In addition, during the programs we watched, one Hispanic played a major role in one program of Love Boat. In other words, a Hispanic played a regular, major role in only two of the 17 programs viewed. More specifically, there were 92 actors classified as major; the percentage for Hispanics was 2.2.

Four of the nine Hispanics played minor roles. Two were cooks on Archie's Place, one was a maid on Dallas, and another appeared on Hill Street Blues.

CONCLUSION

The 1980 census data indicate that approximately 6.4 percent of the people in the United States classified themselves as "Spanish origin." One must remember that this percentage is not precise because persons of "Spanish origin" may be of any race. In addition, with estimates of the undocumented Hispanics, the total percentage for this subgroup could be about ten (10).

One conclusion is that Hispanics were definitely underrepresented in the 17 programs observed. Another is that Hispanics were further underrepresented in major roles.

Finally, in terms of our perspective, we feel that we have provided useful, valid information with limited resources. A more exhaustive study, as done by Greenberg and Bantista-Fernandez, would probably reach the same conclusion as theirs, namely, that the percentage of Hispanics in ALL programs is even smaller than what we found.

League of
United Latin
American Citizens

Office of National President
TONY [illegible]A

October 14, 1982

PERSONAL ATTENTION

Chairman Clarence Thomas
Equal Employment Opportunity Commission
2401 E Street, NW
Washington, DC 20506

CLASS ACTION COMMISSIONER'S CHARGE
AGAINST MAJOR NETWORKS, STUDIOS
AND ADVERTISING AGENCIES

Dear Chairman Thomas:

The League of United Latin American Citizens,* on behalf of twenty million Hispanics, hereby formally files this Commissioner's Charge pursuant to 29 C.F.R. §1601.6.

As set forth herein, we formally request the immediate issuance of a Commission Charge of Systemic Employment Discrimination Against Hispanics by ABC, CBS and NBC television networks; Paramount, Universal, Mary Tyler Moore Productions, and Norman Lear's Embassy Communications film and television studios; and Ogilvy & Mather, Young & Rubicam, and J. Walter Thompson advertising agencies.

Unlike virtually all other employment discrimination cases that have been filed with the EEOC, this Commissioner's Complaint raises a larger, interrelated problem. Specifically, the employment discrimination by advertising agencies, Hollywood studios, and the networks affects all Americans directly. The

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* The League of United Latin American Citizens has 100,000 members in 45 states. It is presently in the process of meeting with and monitoring the employment and program policies and achievements of the ten studios, networks and advertising agencies referred to herein.

[illegible] 2590 MORGAN AVE. - [illegible] 512-882-1244
[illegible] 1ST STREET, N.W. SUITE [illegible] WASHINGTON, D.C. 20001 202-628-0737

exclusion precludes television viewers from learning anything about the needs, viewpoints and desires of twenty million Hispanics.

Due to the grave importance of this charge, we would appreciate it being submitted immediately to all Commission members and made the highest priority regarding Commission investigations.

DATA

None of the studios, none of the networks, and none of the advertising agencies have been willing to make public accurate data regarding their employment policies and achievements as to Hispanics. Information is either not given at all, selectively provided, or, for example, salespersons are lumped in the same category with top management and actors with major roles.

LULAC, however, has secured the following information from data submitted to the F.C.C. in 1980 and the Los Angeles Human Relations Council in 1982, as well as data previously provided by the U.S. Civil Rights Commission.

Summary Re Networks

ABC: As of 1980, only 3% of ABC's personnel at its headquarters in New York, Los Angeles and Washington, D.C. were Hispanic (104 of 3,520).

Upon information and belief, less than one percent of ABC personnel in decision-making positions are Hispanic and less than one percent of ABC personnel earning above $40,000 are Hispanic.

An example of ABC's exclusion of Hispanics is that less than one percent of its non-clerical personnel at the D.C. headquarters was Hispanic as of 1980 (2 of 248).

CBS: Less than 3% of its non-clerical employees as of 1980 were Hispanic at its headquarters in New York, Los Angeles and Washington, D.C. (81 of 2,810).

CBS, Continued

Upon information and belief, less than one percent of CBS personnel in decision-making positions are Hispanic and less than one percent of CBS personnel earning above $40,000 are Hispanic.

Only two of its 160 employees in Washington, D.C. were Hispanic, including only 1 of 91 in news.

NBC: Only 3% of NBC's non-clerical employees as of 1980 were Hispanic at its headquarters in New York, Los Angeles, and Washington, D.C. (89 of 2,831).

Upon information and belief, less than one percent of NBC personnel in decision-making positions are Hispanic and less than one percent of NBC personnel earning above $40,000 are Hispanic.

In Washington, D.C., only 1 of its 131 employees was Hispanic.

The impact of these exclusionary policies is clearly observable in terms of network programming. For example:

-- In a 1981 survey conducted by Public Advocates of the three networks, only 1% of all characters presented were Hispanic (37 of 3,546).

-- Only 11 Hispanics were allowed to speak even one word. Almost two-thirds who spoke (7 of 11) were portrayed in negative, criminal roles. All Hispanics portrayed by ABC, for example, were portrayed as inmates at a prison system.

STUDIOS

An analysis of the four major studios referred to herein shows that Hispanics are systematically excluded from important positions within the studios and substantially underrepresented even in low-level positions. For example, "Equal Employment Opportunity in the Motion Picture Industry" (prepared by the California Advisory Committee to the U.S. Commission on Civil Rights) showed that Paramount had only 4 Hispanics among its 200 officials, managers and professionals. This occurred in a city with over 25% Hispanics.

The pattern at Universal is similar to Paramount's. Only 15 of 384 officials, managers and professionals were Hispanic.

Upon information and belief, the patterns and practices set forth regarding Paramount and Universal are also applicable to Mary Tyler Moore Productions and Norman Lear's Embassy Communications.

Upon information and belief, less than one percent of key decision-makers and important roles are occupied by Hispanics at these four studios.

ADVERTISING AGENCIES

Upon information and belief, less than one percent of the key decision-makers at the three largest advertising agencies in the United States are Hispanic. And, upon information and belief, the percentage of employees in general who are Hispanic is substantially below population parity.

We look forward to hearing from you within twenty days.

Respectfully submitted,

Tony Bonilla
LULAC-National President

Mr. LELAND. Thank you. The Chair would like to remind the audience that demonstrations in the committee hearing room are not allowed, but the Chair again acknowledges that he appreciates what the applause represents.

Let me assure Mr. Torres that while in the past the Congress has not moved very aggressively on the issues we are discussing today, since my arrival on the Telecommunications Subcommittee Chairman wirth and other members of the subcommittee have worked diligently on this issue. All of the members of this subcommittee who are here present have a stated interest in the issues that we discussed and are very much committed to doing all that is necessary to effect some real changes in the areas that we are talking about.

Let me address a question to all of you. The minority community has a gross national product well in excess, as alluded to by Dr. MacDonald, of $150 billion. The black community in the United States has a larger population than the total population of Canada. For well over 10 years minority rights groups and community organizations including some of those who are represented here today have exerted pressure on Hollywood to restructure the industry to resolve the problem of underrepresentation and misrepresentation of minorities in the media.

Unfortunately, we appear to be regressing rather than progressing in the communications media. What can the minority community do to exact some positive changes? In other words, you are the representatives of activist organizations, and are involved in analyzing these problems, what do you feel the community at large can do to bring about some change?

Mr. TORRES. I will respond very quickly since we have been doing a lot of these things now. As I indicated in the testimony, when we took the position on the syndication rule we had hoped that the good-faith effort would be responded to in kind by the networks. We launched a national media campaign in which we informed local media councils to monitor local affiliates and see just exactly what type of record they have off and on the camera of Hispanics.

We attempted to be very reasonable in our first attempts. We try to sit down with the nationals as well as the local affiliate networks to discuss ways of improving, making improvements, institutional improvements, affirmative action things, opportunities for producers, development of Hispanic programing, and so forth.

At this point we have reached a level where the discussions are no longer going to help. We filed a charge of discrimination against the networks in October of last year, and we hope that that charge is going to bear fruit in the very near future, but I think that in view of our reasonable attempts to deal with the networks, and to some extent with the studios, the only alternative now is to really hit them in the pocketbook, and I think that that is the only alternative that minority America has, because I don't think that you can really reason with these people.

I think what we intend to do is to pursue much more of a legal approach of filing lawsuits against them, dealing with cable television and making sure that the networks are not allowed to get involved in things that would only expand their sphere of influence and at the same time insure the same practices.

We are going to be doing a lot of these kind of things, and we have up to now as much of press coverage, press attention given to what they have done, as many reports as we can do, at least maybe 1 every 6 months measuring whatever progress.

NBC officials tell us that they have been making progress, and with all due respect to NBC I would have to say to some extent there is, but NBS tells us that they are going to put one Hispanic on the air next year, and so we are supposed to be happy with that.

I don't know what these people expect from us. I mean, do they expect us simply to say: Thank you very much, we are going to go home and that is all over?

I don't really think they understand exactly the fact that we want institutional change and not simply just an immediate gratification gesture. But those are some of the things that we believe would be helpful, and we think eventually they will prove to be very, very beneficial.

Mr. LELAND. Thank you. Ms. Charren.

Ms. CHARREN. You asked about what the public can do, what can citizens do. For 15 years ACT has been talking about the problems of children's television, to the networks, to the industry, to parents, and to the Government, and through two Republican and one Democratic administration, people were listening a little bit. Even in the Nixon administration we had Dean Burch talking at industry meetings about the needs of children, for whom the marketplace doesn't work.

But with the Reagan administration what has happened is that the swords of Damocles at the regulatory agencies that are supposed to make the Communications Act work—the Communica-

tions Act that says broadcasters are supposed to serve the public interest—those swords have been turned upside down.

This administration seems very interested in other kinds of weapons, but when it comes to the weapon of enforcing the law in this particular area, we find that because of the regulatory attitude in Washington, because the need is to regulate on the side of the industry, that nobody really wants to listen to the consumer anymore.

You can't hire children to do children's programs. It is OK on cable access channels, but it is really not the way to do programing at a national level, so you can't fix it by getting children in there. The FCC, which is really the place to go if you want change from the industry, if you want that act enforced, has been behaving so badly that ACT sued them.

In fact, next Wednesday our suit is going to be heard in the court of appeals and, who knows, that may cause somebody to listen, if the regulatory agencies, and the White House don't listen, and if they ignore everything that is happening on that screen, then we must turn to the courts.

Mr. LELAND. Ms. Cooke.

Ms. COOKE. Yes, I would like to add something to what Peggy has said in terms of the need for leves and the need for regulation in the process, and I think if I can speak for several experiences that we have had at Citizens since we have been litigating on behalf of citizens and consumer groups since the late sixties, and I will give an example of a regulation that is no longer in place that was dismantled because the administration said it didn't work and that was the top 50 market policy which provided that a licensee could not own more than three television stations in the top 50 markets.

And the concern was the reach of potential audience, and because the Commission, the regulatory agency granted every waiver that was brought to it by a licensee, the Commission said it didn't work. But something happened, because it provided a lever for citizens groups at the local level to negotiate with broadcasters and hit their pocketbook because legal fees had to be paid if the suit was not negotiated, in a way that could allow them to address specific needs.

I can recall one agreement that was negotiated with a St. Louis broadcaster as a result of the top 50 market polls and as a result of that agreement, that particular station, which had problems in its EEO profile, negotiated an agreement which meant that it would go to parity—parity, not the 25/50 percentage in its work force. There was a concern, too, about using minority women as two-fers so as to underplay the minority count. We negotiated an agreement that provided only a pecentage of women minorities could be double counted.

There was a concern, the station told us, that they did not have qualified minorities in women to do programing and production, and therefore part of the agreement was not only would the particular station provide more public affairs, but it would also permit at least a couple of shows to be provided by local programers and make its equipment available.

The key to this is that the public interest standard and the regulatory framework that flows from that can work, if the regulatory

regime in Washington is sensitive and broadcasters know that there is some accountability, and the levers are in place, and the kind of assistance is provided to citizens groups to make the act work.

Mr. LELAND. Thank you. Mr. Edwards.

Mr. EDWARDS. As I understood your question is, what would we like to see? I would just like to see some honesty in carrying through the regulations that we are supposed to have, and to be able so people won't be so confused as to how you really get to the FCC, and how do you get some action on an issue. I think if we go up against a station like in Los Angeles, well, it takes almost a year and a half before you get an answer back, and so by the time you get the answer back, everything is diffused.

When we hear from the stations in Los Angeles, when they get ready for their license to be renewed, and the basis of it, as I think the minority groups, we would all come together and go in instead of being separate from each other but work with each other and be a force and let the networks know that no longer will they keep us divided by playing games, and be able to go in and get what we all want together, and represent all of us, instead of one being over here and the other one being over there, because that is what has kept us divided all along.

I think the other thing is that I think when Congress makes regulations and passes laws, I think these laws should be a commitment by Congress itself to make sure that it is carried out, and the regulatory agencies such as the FCC should be one that is independent, not bowing to any administration, because communication of the airways is very, very important. It affects all of our lives.

Mr. LELAND. Dr. MacDonald.

Dr. MACDONALD. I think whatever could be done must take into cognizance the bottom line again. This is a business, and it is also a business that is fraught with lots of danger, because we are talking about free speech, and we are talking about the Government's role in free speech, and what all.

However, I think that whatever is decided upon should take into account the financial aspects of television. I would argue for laws, for instance, permitting tax breaks for the hiring of minorities, perhaps the ability to writeoff minority salaries for the first 5 years, something that would make it encouraging for networks to purchase, in a sense, the labor and skills and abilities of minority workers.

I would argue also that lobbying efforts, although they have a chronic history of failure, could nonetheless be much more substantial, if they pointed out the importance of black viewers. As I suggest in my written report, and in the oral delivery, blacks are becoming—or minorities for that matter—an increasing proportion of the television viewing audience, because whites are moving to alternative uses of television.

They are using cable, video games, video recorders, and what all, and with cable mostly in the white suburbs we find 25 percent of the viewing audiences of daytime soap operas is black females. The result is we have very different roles with black actors than have been traditionally there, roles which are still not viewable in prime time, however.

I would urge also that polls could be commmissioned, developed to show the importance of the consumer force and the demographic force of minority audiences. I would suggest, too, that the organization of the black viewership or minoriy viewship, so that it could become an important force, especially minorities who are on Nielsen homes. One Nielsen home is worth hundreds of thousands of non-Nielsen homes.

I would also argue that minority actors could be organized to protest demeaning roles, not only to protest roles that aren't there, but those that are there.

I would also suggest political pressure, organized pressure placed upon candidates for the 1984 Presidential election. Perhaps the election of Jesse Jackson is the only answer, but I think that the other white candidates, Republican and Democrat, could feel the heat of organized protests, and bring to the office in 1985 a new attitude, particularly an attitude toward the FCC, where it seems now we are selling our birthright, the birthright to the fact that the people own the airways, to but a few companies. However, that, too, goes with a new outlook in 1985, either from the reelection of the incumbent or from the election of a new man in the White House.

We still could bring pressure through organized political efforts, so I think that in terms of suasion, but also more importantly in terms of bottom-line profitability, the situation could be brought home more strongly than it has.

Mr. EDWARDS. I would like to ask the gentleman a question. Does he mean if I were to go to work for a network I would get a tax break?

Mr. MACDONALD. No, the network would. Your salary could be written off for 5 years, so it is an incentive to hire you, assuming that once you are in the door for 5 years' working, that you will have proved your worth and therefore be retained.

Mr. EDWARDS. So I don't get a tax break, too?

Mr. MACDONALD. No. You would pay your taxes like anybody else, but the network would, in other words, be able to depreciate your services, much as baseball players are depreciated by the team owners.

Mr. LELAND. The Chair would like to recognize Mr. Yzaguirre.

Mr. YZAGUIRRE. I have a few suggestions. No. 1, Mr. Chairman, it has been our experience that there are precious few oppportunities for Hispanics to receive training in the media, that we are all totally dependent on the networks and a few of the stations.

Second, we lack research on the untoward effects of negative stereotyping on our self-concept. We have approached NIMH on a number of occasions and asked them to undertake this research, and they indicated they wouldn't touch that with a 10-foot pole. I think we need to take greater advantage of the license renewal challenges. We need to look at capitalization.

Ownership is really one of the major keys. You can do all you want to around the edges, and be on the outside trying to look in, and trying to make some changes from the outside, but it has been my experience that when you have ownership, that that is by far the most effective way of bringing about some change. So we need

the Small Business Administration to focus much more on minority financing of radio and television by minorities.

We need enforcement. We need these kinds of hearings and we need greater enforcement in particularly the civil rights area.

As you know, there has been a conflict as to who has authority, EEOC or the FCC, who has jurisdiction on civil rights enforcement. I think that that ought to be settled, and that there ought to be some very aggressive enforcement of civil rights provisions.

Mr. TORRES. Mr. Chairman, could I make just one quick comment?

Mr. LELAND. Ms. Cooke——

Mr. TORRES. I am sorry, Ms. Cooke. I just want to say that my organization would look very, very negatively upon any kind of tax credit for any network who hired a minority. I don't think under any circumstances should somebody be given a tax credit for doing what they are supposed to be doing, and doing what is the right thing to do based on merit. I just don't think that our organization would under any circumstances support that.

I think the other point is that a lot of the responses have been with regard to Government regulation. There is only so much the Government regulation is going to be able to do. I think Dr. MacDonald made a good point about the economics of it. What you are really looking at is that if minority America ever can get well organized enough to conduct consumer preference viewing, drives that will make the change.

Government regulation in this land is going to have some impact to some extent, but it will never have the impact that consumer preference viewing would have on the networks or even on the studios, so that is really what it all comes down to.

Until we get to that point or somehow the networks become very benevolent we are really never going to see major changes. But, clearly, that should not refrain your leadership from doing everything it can to aggressively go after the networks and try to bring about improvement. But I wanted to make those points, because I thought they were very important to be made at this point.

Thank you.

Mr. LELAND. Ms. Cooke.

Ms. COOKE. I would just like to echo the point that I think minority participation is a value. Participation in any sense that tax credits would be given simply because one is a minority and hired to do a job I think would create and indeed reinforce the kind of stereotypes that are here about minorities and capabilities and so forth.

I would like to just address one thing in terms of what the subcommittee's role might be, and I think I would emphasize your oversight function, that it is as important as even regulations are implemented to keep an eye on what is happening and to be prepared to change or eliminate things.

I will give you a couple of examples. From one from the area of ownership which I see is key to this issue, and in grave danger, I think this particular subcommittee should be concerned about Chairman Fowler's public statements that minority preference is unconstitutional. I think that is key to ownership, and it is the policy of the nation and also of the Commission.

I think concerns that have cropped up and signals from the Commission in the context of cases such as Rivers Broadcasting, in which the Chair and then Commissioner Sharp indicated that minority ownership preference should be tied to a substantial presence of minorities in a community rather than being a good in and of itself. And when one thinks about the fact that minority by definition means that one will not be a substantial presence in a community it seems to wipe out minority preferences.

I think another question might be looking at the area of extending minority preferences and ownership to the new technologies, one of the difficulties has been that the new technologies seem to be common carrier kinds of technologies and the like prior to this has been programing and therefore ownership, but the new technologies and new carrier systems are aware what future action will be and need to examine the philosophy in ways of dealing with that kind of question and extending tax certificates to them.

Again, I think your substantial efforts in dealing with questions of EEO at the Commission, internal EEO and external EEO, demand and require continuing oversight by this committee, and I think to the extent that the subcommittee keeps the FCC accountable, that will be the extent to which broadcasters during this regime will be accountable to the American public.

Mr. SWIFT. Would the gentleman yield just briefly?

Mr. LELAND. The gentleman from Washington.

Mr. SWIFT. Ms. Cooke makes a very important point when she says we should be concerned about the fact that Chairman Fowler believes that pursuing certain of these things would be unconstitutional. But it might be pointed out for the record Chairman Fowler believes a great number of things are unconstitutional that many others, including the U.S. Supreme Court, do not find unconstitutional.

Mr. LELAND. I thank the gentleman from Washington. The Chair would now like to recognize the gentleman from California, Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

I want to commend this panel. I think you have done an excellent job of outlining the concerns you have and the concerns we share with you, which is the reason for this hearing. I also want to give recognition to my constituent, Mr. Edwards, and tell him I am pleased he is here. I notice you have others of my constituents who will be testifying later. Unfortunately I have to leave. I have a conflict in my schedule but I want to welcome them as well. I am aware of what they will be testifying about.

I had the opportunity to hear them at our Los Angeles hearing. I was pleased at that hearing when they requested we have a hearing here in Washington the chairman of our subcommittee, Mr. Wirth, and Mr. Leland working with him, were able to accomplish this meeting here today. I hope it is the beginning of not just the accomplishment of a hearing further accomplishments trying to deal with the problem outlined.

I have just one quick question I would address to maybe Dr. MacDonald because he has raised this issue.

When we look at something like the Voting Rights Act, we see a great success story, because we see that when blacks are participat-

ing in the electoral system, politicians white and black respond to that constituency. Now, television is a business, and television stations and networks are out to make money.

When we realize, as you point out, the financial clout that black Americans have, why wouldn't we expect them to respond to that financial clout, and if they are not responding to it, how can citizens bring across the point that there is a reason for them in an economic sense to respond to those concerns of the minority community?

Mr. MACDONALD. Well, of course, the reason they are not responding to it is that black America is swallowed by the larger white America in percentage of the national GNP, and therefore what is astronomical in terms of world GNP's is relatively small relative to the total American consumer force.

However, I think that private groups can become much more effective in terms of raising the consciousness of black viewers or minority viewers for that matter, in terms of arguing with substantial facts, statistics, not just rhetoric, not just, pleas, to moral decency. That doesn't work. With absolute statistics: Hey, look, there are 35 percent of the viewing public of this particular program who are minorities; why don't we have more minority imagery?

Or when there have been positive images of minorities on television, we see that the ratings were such and such, why don't we have more of that? And this kind of argumentation could be directed not at the networks necessarily alone. Production companies, ad agencies, sponsors, ratings companies, all of them are part of the industry.

But I think just purely a persuasion of morality, of decency is whistling in the wind as the business interests whisk by. You have to speak their language, and because it is an industry that involves free speech, we have to be very careful about just how far Government goes, because perhaps most of us in this battle would enjoy a liberal government in its utilization of clout and power in control of television, but what happens in a conservative or a reactionary government? You may not like that, but you have already set the precedent. You have to be careful.

Mr. WAXMAN. One source of accomplishing objectives, societal pressure outside of Government is another. It seems to me you have to explore both avenues with a sensitivity that we do have a Constitution that guarantees free speech, and we want to be very careful not in any way to eliminate the protections that the Constitution affords us.

I would just maybe in a rhetorical way say that if we have Spanish language stations that attract many in the Hispanic community, I think that is fine, for those who want to be able to opt to special programs. But I would hate to see the day when we are going to have television for blacks, television for Hispanics, television for upper middle class whites, et cetera, et cetera, because I think it is as important for the minority community to be fairly represented for their self-image.

But I think it is even more important for the majority population to get an appreciation of what all our people are like in this country, and if we only watch each other ourselves on a special television programing, we ghettoize our population in a way that de-

stroys the diversity that this Nation has, which enriches all of us, and I just mention that point not particularly in any contradiction to your assertion that Hispanics do have that option. I think that is not a sufficient option, nor would I think that you happened to think it was a sufficient option, but I think it is important for all of us, those in the racial majority and those in the minority——

Mr. MACDONALD. No; I totally agree with you. I suggested that if the Hispanic situation was bleak, at least there was that alternative. Relative to black Americans, there was not even that alternative, and of course cultural apartheid is not the answer. Cultural ghettoization is not the answer.

However, I wouldn't call cultural apartheid or ghettoization the narrow casting of television; that is, the ability to appeal with 40, 50, 100 different channels to one-tenth of the audience, rather than with three channels to the networks, the way they now exist, to one-third of the audience. That is really the hangup.

Above all is the fact that you have only three companies that control all of television. They only own 15 stations, but their shows are on almost every VHF station in the country and their reruns, or shows that pass through their portals, are on almost every channel in the country, so that is really the major problem.

You have to get one-third of that audience. When we only have to get one-eighth or one-tenth of that audience, or one-fifth or 1 percent, then we can have a whole station for just jazz, a whole station for just cooking, a whole station for whatever types of programing.

Mr. WAXMAN. I thank you very much for your response to my comments. As the chairman of this committee knows, and other members know as well, I have been a very strong opponent of the trimonopoly or——

Mr. MACDONALD. Triopoly.

Mr. WAXMAN [continuing]. Of the three networks, and have championed at least the limited rules that we have now in place, that keep them from even further bringing in under their control television programing. I think a great deal of our programs is due to the fact that we have three networks that dominate, that seek not to try to bring about these other public interest concerns, but just to sell products, and I find it is something we have to acknowledge as a reality, and something we shouldn't succumb to or acquiesce in.

Thank you, Mr. Chairman. I again commend you for holding these hearings.

Mr. LELAND. The Chair would like to recognize the gentleman from Texas, Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman. I would like to direct my first question to Ms. Cooke.

You may have almost, adequately answered this question, but there has been so much testimony I didn't pick up exactly what I want to know.

There have been an awful lot of criticisms directed today, at the broadcast industry all of which I agree with.

We mentioned poor enforcement, a poor effort on the part of Congress, and so forth, to address these problems. My question is this:

Is it your group's feeling that the existing statutes and the existing regulatory scheme are sufficient to eliminate the problem we are addressing today, if that scheme is adequately enforced, or do you advocate additional changes in our statutes, additional changes in the mandate that we have given to the FCC, or anything else in addition to what we have now?

Ms. COOKE. I think that there are different aspects of the problem that the statute addresses, and then it does not.

For example, in the area of minority ownership, I think the question there is not necessarily amending the statute. I think the statute is adequate.

The key there may be being concerned about ownership restrictions. I think the Congress could make efforts in the area of tax policies to provide incentives. I think you can use the tax statutes in order to provide incentives, and that would be the way of addressing in another substantive area some of the capital problems that are present in terms of ownership opportunities in the industry.

If you are looking at questions of portrayal, I think that there we do come into some difficulties in terms of further amendment kinds of issues, and the question is, How do you deal with that area without coming in contact with the first amendment?

I don't see regulation, direct regulation, in terms of kinds of regulation there. I think if you increase minority ownership, if you increase employment possibilities, that those will react and respond to questions of imagery in broadcasting, but it has to be a pretty aggressive kind of situation.

There may be other areas that are not as directly related.

I think I would go off in terms, if you are thinking of tax credits, of what we have looked at are tax incentives in terms of tax certificates—I am sorry, in terms of transfers.

There might be tax credits in the sense that if one does a training program of some sort, that there is clearly a kind of nexus between employment and what the Government pays in terms of unemployment or retraining, which is a part of the national experience, so I think that there are other ways to look at particular issues.

I would emphasize structural regulation.

I think in the area of children, there content and direct regulation is important because they have no marketplace power so you have to perhaps mandate.

Mr. BRYANT. Would you agree with Dr. MacDonald that congressional policies that encourage the multiplication of channels is something that is going to advance the inculsion of more minorities in programs?

Ms. COOKE. Not necessarily. I think it has a potential. I think for all of us there is a potential in how it is regulated and the incentives will make a difference in what happens.

For example, I think, as Peggy has pointed out, to deregulate on the assumption that there is a plethora of video outlets would be a mistake. Most of them exist on paper.

A lot of the video kinds of possibilities we talk about will be tied to income and therefore they will be available to portions of our society and not others.

The others will have geographic concentration. For example, we talk about cable as if it is everywhere and yet it is less than 35-percent penetration, so, first of all, where will they be?

Will they be profitable? Will they come into existence?

I think the next question is, who will own them.

If we remove all of the ownership restrictions, then the diversity that we think will occur may be replaced by the same players, stronger and more integrated, coming into the marketplace, and, therefore, you may have the same kind of programing possibilities that we enjoy today and so I think there has to be structural regulation in order for what we assume to be a marketplace to work, and, therefore, I would be very concerned that new players come into the industry rather than old players extending their presence.

Mr. BRYANT. Ms. Charren, do you want to answer this also?

Ms. CHARREN. I agree 100 percent with Wilhemina. I want to point out, since FCC Chairman Mark Fowler was mentioned, that, in addition to his other ideas about unconstitutionality, he thinks that PBS could do it for just about everybody that television isn't doing it for now, and that is nonsense.

I mean, they cannot only serve the disadvantaged and the unserved. PBS is only one spot on the dial.

I think Montana still doesn't have a public broadcasting station. PBS can't do it for everybody all the time. We keep talking about networks, but we should remember that the communications law applies to every station, each and every station in the country, and that if each station were doing its job, there would be diversity.

The other point I agree with is about cable. Cable is already disappearing as a diverse mechanism for bringing the thousand flowers blooming to the public. It was more diverse a year ago than it is now, and I think we may already have lived through the golden age of cable programing.

Not services: there will be additional services—banking and shopping—but not as far as programing is concerned. The USA Network, for example, did away with a really delightful diverse film program that took film from all over the world and ran it for children at 6 o'clock at night.

I noticed in the trade press that they have just bought 100 Hanna Barbera off-network cartoons. That is not going to do a lot for diversity for children in this country.

Mr. LELAND. The Chair would like to recognize the gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman.

I wish to thank the members of the panel for their presentation this morning. You certainly have pointed out a very serious problem that we all need to work on.

Recently there has been a ruling by the Commission which would tend to lead toward the control by the networks of syndication. I am more concerned that they may go further in this direction.

Do you believe that in view of the record of the networks in minority employment, that this would help your problem, if they would be able to have a greater control over the syndication of programing, and thus a greater control over the programing itself, and the production?

Mr. EDWARDS. I would say no. I don't think so. If they are not going to do it now, do you think they would do it then? They would want to take control of syndication because they don't have control of syndication now. That is how some programing gets on the air.

Say, for instance, with the Beverly Hills Hollywood NAACP, we do the Image Awards throughout the year. We figured we couldn't get it on network prime time, so if we raised the money ourselves from private industry, we will be able to syndicate it. For the first time in its 15-year history last year we did syndicate the NAACP Image Awards and positive feedback we got from that.

Now we are looking at negotiations with a major network for prime time for this year, so, therefore, we have been trying for 15 years to get on and finally, when we decide to go and raise the money ourselves and hire syndication to syndicate the show, we ended up now negotiating with a major network possibly to do the entire show.

Ms. CHARREN. I agree. I think doing anything to compromise in any way those financial interest rules is a mistake.

I notice the networks are not here in tremendous attendance. I think C-Span must be the only cameras in this courtroom—or rather, hearing room.

It is my experience that the three networks do not put issues about television on the air and they try to keep the public from finding out what communications issues are important today, and I think that possibly those issues are the most important thing that this country better deal with, and nobody understands that.

Nobody understands that the broadcast spectrum is like land in this country. It is limited. You can't just open your own broadcast station and that is why we make rules. I think that to expect the networks to start to serve minorities well, if they have a release of those rules now, is preposterous.

Look what they are doing for children. The fact that nobody is putting pressure on them means children's programs are disappearing off the networks except on Saturday. If they wanted to stop a rule like financial interest now, one would have thought they would have done better service at least through the year before they made the point.

Ms. COOKE. I might just add that usually on communications issues I can move with fervent passion in a particular direction, and I can on this one. I do believe that the syndication and financial interest rules should be maintained. I don't think the networks have yet explained why those rules have prevented them from hiring more minorities and women as producers, and I think that is one of the issues.

At the same time, there is a great deal of concern that I think will be presented by subsequent panels, first-hand accounts of what independent producers have done, and they have failed to attract and to hire minorities produers, and also to present programs that reflect more positive images of minorities and women in our culture.

Now, it seems as if they are saying, well, the networks won't show it, and the networks seem to be saying that they don't present it, and I think that this is a situation in which the question of concentration may control the issue, and, therefore, any attempt

to enlarge the network's power on this I would think would be a problem.

Mr. BRYANT. As long as you have a greater diversity in the flow of this programing though, isn't there a better chance for the minorities to be able to be a real part of it, and to produce the shows themselves, to be able to control some of the programing themselves, more than if you turn it over to networks?

Ms. COOKE. I think there are two things. One, as long as there is some opportunity for the independent producer to be profitable, then there is the possibility that that diversity can happen.

I think the other thing that is important in the financial and syndication rules is that I think it has made a difference for independent stations to be able to have off-network programing, and on this particular issue I think the health of the independent stations is particularly germane in how you come out with the calculus.

Mr. MACDONALD. I have been trying to wrestle with that whole problem. We have to keep in mind that in the first 20 years or so of television the networks were the syndicators, and it was only an FCC decision that gave it over to private companies in the first place.

Perhaps the arguments raised in the late sixties when that happened would be worth reappraising now.

In another sense, however, I really can't see how there is very much difference to be made as to who syndicates the reruns that the networks have run originally. The audiences are the same. The bottom line is the same. It is just a matter of who is going to make the money

When independent syndicators have been in control, there has been no appreciable difference in the portrayal of minorities than when they weren't in control, and I think what is missing here is the political sense.

There is in application a quid pro quo and if you are going to give up something, something should be demanded in return, and perhaps here is the crux of the matter.

If, indeed, there is going to be a switch to allow networks to control greater portions of the revenues of reruns, then let's get something from them in return. Let's not just give away the candy store. Perhaps that is then the ultimate bottom line on this particular measure.

Mr. TORRES. Mr. Moorhead, your question is very interesting, especially for us, since we went through an extremely interesting adventure for a year, last year, about this time. In October the networks came to us and asked us to support the repeal of the syndication rule, always telling us that if they had the control, they would have more money, and with more money they could produce more programs.

They would also lock into the possibilities of doing Hispanic programming and things of this nature.

Well, we were nobody's chumps at that time. We were willing to go along on a good faith effort, always making it very clear that we expected to have some progress made.

A year later we see very little improvement. We see very little movement on their part and the whole year's period was very interesting because, when we did that, when our board passed a reso-

lution supporting the repeal of the syndication, then the studios came to us and the studios said that no, no, no, no, you are really going to hurt us because we can provide the opportunity.

Then when we went to the studios, the studios said, well, no, that is not really true because we really don't control it. It is really the networks' fault so we went back to the networks and they said, no, no, no, it is the studios, you see, and so it became a joke for us.

We learned a great deal from the experience, but we always felt that if we showed our good faith in this effort in supporting the networks, that they would make some reasonable effort to improve.

We attempted to deal with them as we deal with a Congressman or a Senator, but like the gentleman indicated, there isn't a quid pro quid in this industry, and there has been very little progress.

I think the progress that has been made has been made primarily because of the commitment of a few people and one of the networks. If you look at the National Association of Broadcasters, there is no commitment there, the trade association for the media industry.

There is only one Hispanic in the trade association, and unfortunately there is no agenda designed to deal with bringing Hispanics into the overall system. In conclusion, so we saw that the syndication rule had very little impact on whether the studios were going to provide diversity and progress, or whether the networks were going to provide diversity and progress for minorities.

I think the only entity that could be hurt by this, as Ms. Cooke indicated, would be the independent stations. They would be potentially the only ones, but even with the independents, we have a lot of problems.

There are just a lot of problems.

Mr. MOORHEAD. Thank you.

Mr. LELAND. The Chair would like to do two things now.

One is to thank the permanent chair of the Television Communications Subcommittee for calling this hearing and for being so very interested and committed to the issues that we put forth today and would also like to recognize the chair of the committee, Mr. Wirth of Colorado.

Mr. WIRTH. Thank you very much, Mr. Chairman. I would like to ask unanimous consent that my prepared opening statement appear in the record after your statement at the start of the hearing. [See p. 3.]

Mr. LELAND. Without objection.

Mr. WIRTH. Second, Mr. Chairman, just to note I am delighted that we are having this hearing as a followup.

As Mr. Waxman pointed out at the hearing you and he organized in Los Angeles last summer, we had committed in the discussion with panel members and among ourselves to an extensive investigation about minority participation in the broadcasting and entertainment industry.

We have been delayed in getting at the sampling survey because of our activities on the comparative renewal question, which I want to come to in my questions.

We have had an extensive questionnaire going out to broadcasters on the question of the programming they air and related issues.

I just want to point out that Mr. Leland has been unflagging in his determination to meet the commitments which were made last summer. It was the intervening business of comparative renewal on that that has gotten in the way and we will pursue our obligations after we sort out these questions, which brings me to the issue of comparative renewal and one of the rationale for the hearing today.

I was late this morning.

Let me give a little vignette that points out what this issue is all about.

I was late this morning because I was up town speaking to a large group of financial analysts related to telephone rates, and the concern that they had about the economic efficiency of the telephone system. In the question and answers they were coming from a perspective where the issue of quick efficiency for the companies was the only issue they were concerned about.

They were not concerned about the other issue, which we have to be concerned about, which is the issue of making sure that telephone service is available to all Americans.

There is a social goal and an economic goal and it is our job to mix those two together.

We have the same problem here, and the thrust of this hearing and the issue of comparative renewal goes to the question.

The broadcasters have come in and said that they think it is appropriate for us to get rid of the comparative renewal process and have asked us to legislate the removal of comparative renewal.

A number of us, and Mr. Swift has been very outspoken on this, and I think all the members of the panel who are here have been outspoken on it, say that there is a social obligation, a responsibility that the broadcasters have, which they get in return for receiving that license, and that that is an obligation which, if one does not have any comparative renewal standard, ought to be replaced with some other kinds of obligations. Mr. Swift has led the discussion and the battle for having a quantifiable standard where we would identify, if possible, various public interest responsibilities and quantify those. If we are going to get rid of comparative renewal in its place a broadcaster should be expected to meet certain quantifiable goals, and one of the questions which we face is obviously what are those quantifiable goals.

What we have done in this major survey that the subcommittee has sent out to broadcasters is, first of all, to try to find out what the broadcasters are currently doing. What are they doing in the area of minority programing? What are they doing in the area of programing for children?

What are they doing in the area of programing for the elderly?

I might say that we tried to do this without a great deal of assistance from the broadcasters themselves. The National Association of Broadcasters, effectively discouraged their broadcasters from sending back information about how those broadcasters are using the public airwaves.

It is quite extraordinary to me, but apparently there is a rationale for it, that some broadcasters wrote back to us and said that they thought it was an imposition or perhaps an infringement on the first amendment if we in the U.S. Congress found out what pro-

graming they in fact were sending out over the public airwaves, They claim that was an infringement on the first amendment even though those very same broadcasters have to report that to the FCC every 5 or 7 years, it was an impingement, that Congress couldn't find out about it.

We will be coming back to that issue.

Leaving aside my own more than pique on that particular issue, the question is, do you all believe that it is possible to quantify this public interest in terms of programing for children or programing for minorities or programing for the elderly?

Is there a quantifiable public interest that we can build into legislation as a replacement for the comparative renewal process; that is, comparative renewal as now required in the law, and it requires the Congress to change that law.

We are intent upon a process of attempting to devise consensus legislation to quantify this public interest responsibility, to replace the comparative renewal standard, so with that as a long introduction perhaps, Ms. Charren, you might want to comment on it.

Ms. CHARREN. With the caveat that I am not willing to give up on comparative renewal, but I get a sense of which way the wind is blowing. ACT spent a long time trying to answer that question as it applies to children. We think that the processing guideline presently in place at the FCC for network affiliates is a kind of base that we used as a way of dealing with this question in a way that wasn't content sensitive or in violation of the first amendment, because I think it would be inappropriate for this body or any body of the Government to say this has to be a good program and you only have so many good programs.

Mr. WIRTH. Good programs or bad programs?

Ms. CHARREN. You can't set the standard, but you can do something else.

Mr. WIRTH. Didn't the FCC attempt to?

Ms. CHARREN. The FCC has a standard that says you have to have 5 percent local programing on a 6 a.m. to midnight day and 5 percent information, news, public affairs and information programing.

What ACT says for children is that you could have the same way of quantifying this standard. Remember, you need more service because what that 5 percent did was put a floor on public service for a station, because in the comparative renewal process, if you wanted the license, you tended to do more because you were afraid your competition would do more.

That is what comparative renewal related to. If there isn't any comparison to make, then the floor has to be the ceiling, and so we think it is appropriate to ask for more service from broadcasters, and for children we have decided that 5 percent programing designed for children aired on weekdays, Monday through Friday, to get around that problem there isn't any now for children Monday through Friday, and 5 percent educational programing designed for children, and education would be defined the same way it has been defined for adults all these years; news, public affairs and instructional programing, and these two percentages could be concurrent.

It doesn't have to be concurrent but it means they don't have to do 12 hours of programing. They could do six a week.

We think that that is a good minimum, and if it is something that is adopted as a quantification standard, we are sure it will be a maximum.

Mr. WIRTH. And the FCC almost did that, didn't they?

Ms. CHARREN. Well, the FCC considered a variety of proposals in our rulemaking that we gave to the Commission as a petition in 1970.

If one of the commissions in the 13 years that we were working on that had acted before this present commission, we may have gotten something similar to that.

This present Commission is not interested in acting at all for the public, we think, and we have sued them for not acting at all. That suit is coming up in the court of appeals this coming Wednesday, not the day after tomorrow, but the 28th, and that only involves getting them to act, but this particular comission could throw out the whole children's rulemaking as a way of acting, and I would hope that this body would reconsider the idea of a commission that focuses on children's television as a separate problem, particularly if this is going to take a while, because we think that a precipitous response—throwing it out—isn't going to help children's television a whole lot.

Mr. WIRTH. Ms. Cooke, you touched on some of the quantificiation in your testimony. In response to our survey, we heard back from television stations that they were doing a great deal in terms of minorty programing and they included in their analysis programs that included interviews with Leon Spinks and interviews with Mr. T and so on as examples of their concern in minority programing.

What is your reaction to what we ought to be doing, and if we go about replacing comparative renewal with some kind of quantification of the public interest?

Ms. COOKE. I think that the question is why should there be a change.

I think if broadcasters are saying that they see quantification because they want to be protected, if they have served their communities well in providing meritorious programing, that they are entitled to renewal expectancy and should not be subject to comparative challenge.

Then I think the question is setting those standards high enough so that what occurs is that truly good licensee is protected and the public interest standard is protected in terms of the kind of service that a particular community gets.

I think the premise has to be getting the information from the licensees to see what the industry standard is, and then whatever quantification standard would have to be above that, if it is meritorious.

In terms of looking at categories of programing, I think that is about as far as the Congress should go.

I mean to say that this particular programing within a category is better than that particular programing creates problems that I think Peggy has addressed, but that if it is clear that quantification is not simply a shell game, that it is really a quid pro quo, and that there are categories of service in a licensee still can be challenged, it is not simply that the licensee is completely protected

from challenge simply by doing some of the programing, but has to meet a certain level within the category, it may leave open the possibility that a community group can come in and say, yes, you say you have done minority programing, but it is all this kind, and therefore it wasn't public interest, but I think that kind of resolution should occur at the local level and not as a matter of statute.

Mr. WIRTH. You were going to comment—you were nodding.

Mr. EDWARDS. I was just agreeing with her. I think that it is a fine line and you have to be very cautious with that. I think we have to put more local control, more pressure on the individual stations and make sure that we have those kinds of watch keys and make sure we let the stations know what type of local programing we would like to see instead of the interviews with the Mr. T's and Mr. Tom's and whoever else. We have to also compliment you. We, as consumers, have a sense of responsibility to our individual communities.

Mr. WIRTH. Mr. Chairman, my time has expired. I know I am well beyond my 5 minutes.

Mr. LELAND. The chair always welcomes the chairman to take as much time as he so desires.

Mr. Bates.

Mr. BATES. No questions.

Mr. LELAND. The chair recognizes Mr. Swift from Washington.

Mr. SWIFT. Thank you very much.

I want to explore a little bit what can be done about these things. In our discussion we have mentioned such tools as the marketplace, pocketbook measures, management programs, regulations. I suppose coming from an ethnic neighborhood of no diversity at all, not knowing any black people until I was well into high school, everything I know about black people I have learned from black people who were willing to answer questions, many of which I am sure seemed at the time stupid and insensitive.

But to assume that white males, who tend to run too many things in the country, come to their maturity with a detailed knowledge of minority needs, is to assume that they have more insight than in fact they do. So they have to ask questions.

For example, you mentioned "Julia." I remember one of the criticisms of "Julia" was that she was, oh I don't know, that it was a white style that was a little tan, but that this did not reflect the reality of black life in America and was discounted as a program that wasn't useful at all.

How did you feel about "Julia" when it was on? It seems to me that the decisionmakers need to know answers to questions like that in order to know what it is that they ought properly do. If we can get them to the frame of mind where they want to do what is proper, then they also a need to know what is, in fact, proper. That is where having more minorities in management would help a lot.

Mr. EDWARDS. At that time a lot of us felt good about it because that was particularly the types of homes that we came from in a different sense. We did come from a single parent home and we had our mothers always striving to do better, and "Julia" happened to move up in the upper echelon of a different area that we all strived to get to. She wanted us to get a better education.

Mr. SWIFT. She was educated and professional. She was portrayed as extraordinarily competent in her field?

Mr. EDWARDS. Yes. So that to me was a positive role. What we lack today on television is positive male roles or black family roles, period. As you can see on television, we have two families now that are headed up by white males that have black children. We have two black families on television where the black male is in a positive role. We do have a Mr. T on television, which is not a positive role for a black male because most people will look at us that way. Then we have the thought of CBS wanting to put Amos and Andy back on television.

Mr. TORRES. I remember the program and I thought it provided a positive role model. As far as the Spanish are concerned, we wish we would have had Julia. We haven't had a Julia ever on television, but we had "On the Rocks" about a Puerto Rican inmate who was real swift and got away with murder in the prison. We had "The Cisco Kid," those kinds of programs, but Hispanics haven't been able to have a Julia that we can criticize as being a coconut, which is the equivalent of an oreo. We are concerned we haven't gotten that far, yet.

Mr. SWIFT. I am trying to figure out what are the best things that we can do to resolve these problems? Do you recall the criticism of "Julia" at the time? I do. My reaction was, "What are we supposed to do? If this isn't proper, then what are we supposed to do?"

Mr. LELAND. Will the gentleman yield?

Mr. SWIFT. Not that I expect there to be unanimity in reaction to anything, but it seems to me that there was a damned if you do, damned if you don't quality to that.

Mr. LELAND. I remember clearly the show "Julia" and I remember also the criticism and have heard, too, the allegation that Julia was really an oreo, so to speak, and I think that there was some disgruntlement. That came at a time when it was at the peak of the civil rights movement and activism in the black community in particular, and there were a lot of activists speaking out who were saying that there was a lot more to be shown about the black community than a black woman who lived in an expensive apartment in that particular strata of society. But that was not the case. There was nothing reflective of what the circumstances of what the real life of black people was.

But I think that like Mr. Torres, a lot of people and probably the general audience of black people, who were delighted to see a Julia on television, at least a Julia, and who, too, wanted to see more, but if that was all they could get, they were happy about that.

I would suggest that therein is the problem. The problem is that neither the producers nor the networks have done enough in terms of showing the broad cross-section of the black community, and they didn't show—there was no sense of understanding of the values of black people, in other words.

In other words, Julia arrived on the scene, on the set, if you will, and she arrived very successful. Nobody realized where she came from. There was nothing shown as to her genesis. So I think that that was the preponderance of the issue. It is not that we are attacking, or these people have suggested that there should be an

attack on a Julia, but when all you see is Mr. T, and there is no real comprehensive projection of black life style, Hispanic lifestyle, other minority lifestyle, that is the problem.

Mr. SWIFT. What I am trying to understand is how we can go about improving the situation. For example, it was mentioned, and I think this is true, that to the extent that any soap opera is real, blacks are portrayed on them more realistically than in prime time. If we can figure out why that occurred, we may have some clues as to what can be done in prime time.

The professor indicated that he thought that was primarily because the people who run the soap operas know what the demographics are of their viewers. Would you like to comment on that?

Mr. EDWARDS. No, I will let you——

Mr. SWIFT. How come the networks know it in daytime and they don't know it in prime time?

Mr. EDWARDS. They don't know it.

Mr. SWIFT. Then why are they doing it in the soap operas?

Mr. EDWARDS. They are not.

Mr. MACDONALD. They are doing it to a degree in soap operas. There are programs like the "Edge of Night," "Another World," "All My Children," that are much more positive, in some cases Juliaesque roles for black actors and an important inclusion into the main story lines that represent the soap operas—not in all.

To a great degree it is because Procter & Gamble recognizes that 25 percent of the viewing audience is black women, so, therefore, we want to appeal to black women. Now, it doesn't mean that all soaps have done that but that doesn't mean also that all soaps are highly white. They have occasionally supporting characters, but the ones I am talking about have strong characterizations—and one character played by Darnell Williams in "All My Children" was nominated recently for an Emmy and he plays a ghetto character who has been brought in with stronger perhaps more authentic representative values than the Julia ones.

Mr. EDWARDS. I came here today to talk about the minority suppliers, the suppliers, people who are the producers, directors, and the writers who are not really getting the job done. Yes, there have been some, including the daytime television people, because the recent thing that we had as pressure on the entire industry from within the NAACP structure. We are concerned with the supplier being able to supply the part and the part being accepted.

It is 0.008 percent in the last 15 years of minority suppliers being able to supply the products to the different networks. We are talking about economics. We are talking about—we have the people, we have directors, we have the producers, we have the writers that could put out anything you want, if just given the chance by the networks and given the money, we can do it. Yes, we want people on the board of directors, we want people who are the presidents, vice presidents, chairmen of the boards, and everything else that we can get.

Mr. SWIFT. Then is it fair to say that the real way to get at this problem is through management, pocketbook, and to the extent that regulations can excelerate that, that is the best way to approach it, rather than to try and figure out here at the end result how somebody has decided to put——

Mr. EDWARDS. Put a show on television, yes. If we are included in the total then we are part of the total process, but if we are excluded, we are not.

Mr. LELAND. The time of the gentleman has expired.

We are going to have to move to the next panel now. I thank all of you for appearing and hope that we can all work together.

The chair, understanding that many of the people who were scheduled to appear on the third panel today after a lunch break are going to have to leave earlier than they had anticipated, is going to ask that we combine the two panels and that those participants on the second and third panel be incorporated into one panel.

The chair is going to only recognize one of the panelists, who will then be asked to introduce the rest of his colleagues. We want to welcome all of you and thank you very much for your patience and your participation.

The chair now would not like to recognize Hon. Sidney Poitier, actor, producer, director, humanitarian, and would ask that he introduce his colleagues.

Mr. Poitier.

STATEMENTS OF SIDNEY POITIER, VERDON PRODUCTIONS; MAYA ANGELOU, ACTIVIST, WINSTON-SALEM, N.C.; ROBERT HOOKS, CHAIRMAN, NATIONAL ALLIANCE FOR BLACK ADVANCEMENT IN COMMUNICATION, INC.; BERNIE CASEY, POOBAB PRODUCTIONS; SUMI HARU, LOS ANGELES, CALIF.; MOCTESUMA ESPARZA, BUENA VISTA CABLE VISION; AND TERRY CARTER, PRESIDENT, META-4 PRODUCTIONS, INC.

Mr. POITIER. Thank you, Mr. Chairman.

To my left is the distinguished activist, Maya Angelou. To her left, Mr. Robert Hooks. To his left, Mr. Bernie Casey. To his left, Ms. Sumi Haru. To her left, Mr. Mocpezuma Esparza, and to his left, Mr. Carter.

Distinguished members of the committee, ladies and gentlemen, my name is Sidney Poitier. I am not given often to public statements, nor am I especially known for rhetorical utterances on inconsequential issues. My preoccupation in life centers around a sense of responsibility to be as creative, as artistic, and as useful as my limitations will allow.

Additionally, I am acutely aware of the demands made on each of you in terms of time, energy, imagination, integrity, honesty, character, and fairness, as you go about the Nation's business. I know also that the degree to which the Nation's business is efficiently managed from day to day depends in part on how effectively each of you have been able to serve the interests of all of the people.

Still, I came. First, because of the urgency of the question that brings us before you is immense. It impacts in devastating ways on many of us in this room and tens of millions of families in this Nation.

Second, I came because I know that the public good is defenseless without your constant protection, and third, I came because as you will see, we truly have nowhere else to go. As a last resort, we are

here, therefore, as a response to the rampant, the inexcusable, unjustified, immoral discrimination against minorities in motion pictures and television. We are here as a last resort to respectfully direct your attention to the fact that minority actors, actresses, writers, directors, and producers, with woefully few exceptions, are locked out of employment opportunities in motion pictures and television to a shameful extent.

The degree to which motion pictures and television both have violated and are violating Federal laws surrounding this question will be explored by one of my compatriots. For the moment, let me simply state that the public good and the public interests are being ravaged without regard for honesty, fairness, morality, or decency, and please note that of all these virtues essential to a healthy, strong, and just America, the one that is most abused is the one that fuels the very heart of the Nation—I speak, gentlemen, of the tried and true American virtue of fairness—fairness, gentlemen. Without it, it would be all but impossible for us to lay claim to integrity in our national life. Without it, honesty becomes a cosmetic. Without it we sow bad seeds in our families, in our businesses, in our schools, and in our hearts. It is indispensible in helping to cleanse the national body and keep it healthy. It can also flood the mind with good thoughts and lift our spirits. It is not expendable. Without it, America will become another kind of place to our everlasting regret.

We have come to bring you abreast of this very crucial situation because you are in this instance responsible for seeing that public good is protected and because we assume that neither the networks nor the studios would bring it to your attention with the same fervor as those who are directly afflicted, if indeed they brought it to you at all. It is our contention that without this input and a full feel of the situation from the people who are hurting, you will not have the advantage of a full view of the devastation being wrought by the discriminatory hiring practices of the motion picture studios and in your networks.

We, the black community of America, are 12 percent of the population. Our financial support amounts to roughly 20 percent of the domestic revenues the producers of Hollywood films enjoy. Yet, we receive in some instances, less than 3 percent of the available jobs. Ladies and gentlemen, in each of your constituencies and throughout the rest of the 50 States, would agree, once given the facts that these statistics unquestionably represent a flagrant unfairness in the hiring practices of the studios. We, therefore, ask that you encourage with whatever means are at your disposal, the producers and networks to adhere to the principle of fair play that must surely exist as a requirement if they are to be honestly judged as having met even the minimal requirements of their responsibility to the public good.

Lastly, the motion picture studio heads are not unmindful of the fact that the overwhelming majority of adult Americans over 45 years of age no longer go to the movies, alienated in the main by the lack of content relevant to their lifestyles. The minority spends in the vicinity of a half a billion dollars annually at the motion picture box office. If the black community population of this country were to turn its back on America's screens, which is exactly what

the studios are encouraging them to do by continuing to ignore their needs, such an action would have a devastating and possibly catastrophic effect not only on the studios and exhibitors, but the networks and corporate advertisers as well.

Gentlemen, there is a strong suspicion in the minority community that a conspiracy exists among the producers, networks, and studios to exclude minorities from fair and meaningful participation in motion pictures and television programs. Therefore, we call for an investigation to expose and end this destructive practice.

In conclusion, we hereby urge the committee to pursue the enactment of legislation guaranteeing that a fair and equitable portion of the dollars spent for the creation of programing be allotted to contracts with minority owned and controlled firms.

I thank you for the opportunity to speak to you today and I would like to draw your attention to the remarks of one of our most distinguished artists, Ms. Maya Angelou.

Mr. WIRTH. Mr. Chairman.

Mr. LELAND. The gentleman from Colorado.

Mr. WIRTH. Mr. Chairman, I have a subcommittee bill on the floor right now on insider trading about which I know our panel has a passionate concern. I have to go over and take care of that and will be back in about half an hour.

I want to note to Ms. Angelou that I will not be here for her testimony, but "I Know Why The Caged Birds Sing" has been almost required reading in our household. I will be back shortly.

Mr. LELAND. Ms. Angelou.

STATEMENT OF MAYA ANGELOU

Ms. ANGELOU. Thank you, Congressman.

Congressman Leland and gentlemen, members of this august body, I appreciate the chance to speak to you. My colleague, Mr. Poitier, has given you some data and my other colleagues will give you crucial statistics which will show our condition as desperate, and I hope make our appeal and our appearance here quite clear to you.

I will not add that often given and still false adage that figures do not lie, but I can assure you that the data simply supports the awful truth that black artists do not work in film, in television industries, and certainly not in America, the land of our birth and the fountainhead of our dearest hopes.

In 1971 I was asked to write a screenplay to be produced by a black American and a white American to be distributed by Cinerama. The plot was set in Sweden and we went to Stockholm to shoot the film. It was impossible to describe to you my excitment or detail the exquisite sweetness of seeing my own work take shape. My film, "Georgia," was the first produced screenplay written by a black American woman who also composed the score.

Unfortunately, the brave producers did not trust me to direct the film, but rather chose a Swedish man who had never met a black American in his life, to direct a film written by a black American. When the film opened in New York City, one-half of the audience—when I was introduced—one half of the audience stood shouting bravos and the other half stood shouting boos. I deserved

neither. Had I been given the chance to direct, I could not have made this disclaimer.

I searched throughout this country for a place to learn the craft of direction. The laughter which met my efforts was cutting, the rejection was horrific. But this was my country, the first blacks had been brought here in 1619. That, gentlemen, is 1 year before the Mayflower docked. My people's sweat, tears, industry, and laughter have enriched this soil and helped to form this culture.

I had to go to Sweden, gentlemen, to take a course in cinimatography, in the winter, in the Scandinavian dark, and in Swedish.

In the ensuing 12 years I have had the chance to write two more scenarios, two more for television. My books are required reading in every university and college in this country, and I have had a chance to write two more scenarios. The piots continue to swirl through my head longing to be done. I, one woman, one writer, have much to give to my craft, to my art, to my country, and I daresay to history.

I am able to say that of myself. How much more can I say that of Lonnie Elder III, or Vinnette Carroll? I mean, as writers, gentlemen. David Levering Lewis, with his splendid new book. Paul Marshall, Rosa Guy, Louise Merriwether, Toni Morrison, Toni Kate Bonbarra. How about Douglous Turner Edwards, and our own resident constant genious, James Baldwin, and others who describe Lincoln as we speak, gentlemen, in loneliness, in rejection, still with the hope against the baldfaced evidence that their works will be accepted and their voices heard. Paul Lawrence Dunbar said, "but only occasionally."

Behind those masks are great dreams, great hopes and the possibility of enriching the country. The history, you gentlemen and we, gentlemen, have made together and endured together, is rife with exquisite pain. I would add that art, however, is long, and art redeems the past, nurtures the present, and assures the future. Our culture is desperately in need of redemption, and we are artists.

Thank you.

Mr. HOOKS. Thank you very much, Ms. Angelou.

STATEMENT OF ROBERT HOOKS

Mr. HOOKS. Gentlemen, I am honored to be present with my colleagues to testify before you today to help, in part, clarify a condition of continued concern, one that deserves much attention if we are to be a cohesive America.

Most people are aware, I am sure, that each year the commercial television, cable and film industries report a combined revenue in excess of $10 billion, having developed more rapidly than any other business in world history.

The industry's influence over the minds of our citizens, both young and old, is immense. The power of these mass media as a transmitter of information, manners, habits and social trends is absolutely staggering.

Today television and film tell most of the stories to most of the people most of the time, and time after time researchers bring forth evidence that Americans are receiving a grossly distorted picture of the real world, a picture Americans tend to accept more

readily than reality itself, according to Dr. George Gerbner of the University of Pennsylvania's Annenberg Center.

Over the past 15 years, blacks and other minorities have urged the Federal Government to take action to curtail practices which perpetuate the unjustified exclusion of these groups from the industry's decisionmaking levels.

In 1968, the first major Federal study on the entertainment industry's employment practices was part of the Kerner Commission report.

This report identified factors which contributed to a series of race-related riots in the sixties. The Kerner Commission found that media compounded the exclusion of blacks from a larger society by failing to communicate their needs and concerns.

Since that report, nothing of substance was changed. In 1969, the EEOC conducted several days of hearings in Los Angeles on employment opportunities for minorities in white collar jobs and based on the testimony of studio and union representatives, the EEOC concluded that discriminatory practices existed in both the employment and portrayal of minorities.

The EECO turned its allegations over to the Department of Justice and requested a followup activity. The Department of Justice investigation in 1970 determined that a pattern and practice of employment discrimination in the motion picture industry existed in violation of section 707 of title VII of the Civil Rights Act of 1964, and added that litigation was warranted against the motion picture production companies and the labor organizations representing craft unions.

Unfortunately, nothing of substance has changed. The California Advisory Committee on the Commission on Civil Rights began a study and concluded hearings in 1976 and 1977.

Some industry representatives voluntarily gave information while others had to be coerced by the subpena power of the advisory committee. Consequently, the committee urged the Federal Government to strengthen its enforcement efforts as that appeared to be the dominant motivation for change.

However, nothing of substance has changed. In 1977, the U.S. Commission on Civil Rights released a thorough report on the employment opportunities and image portrayals of blacks and other minorities.

The report stated that minorities and women continued to be underrepresented on local and network forces, but nothing of substance has changed.

In January 1979, the U.S. Commission on Civil Rights released an update. Based on its findings, the Commission strongly repeated its recommendation to the FCC for a inquiry and rulemaking proceedings on the image and employment status of minorities and women in the industry.

Nearly 5 years have passed. Oh, conditions have changed. They have gotten worse.

Today we are faced with a generation of black youth who by the age of 15 have watched 18,000 hours of television and at the same time have spent only 11,000 hours in school and 3,000 hours in church.

Consequently, the mass media has greater access to the minds of our young people than our homes, our churches, and our schools combined. Those images that they watch are not just fantasies on film. As the power of an image is its lasting impression, they affect every job we apply for, every house we seek to buy, every loan we ask for and every educational opportunity we go after because they influence the minds of those to whom the black community must apply.

Nothing of any substance is being done to assure blacks and other minorities that their problems will be seriously and properly addressed.

Fifteen years have passed since the Kerner Commission identified factors which contributed to race-related urban unrest in this country because of the media's failure to communicate the needs and concerns of black people.

If we fail in 1983 to correct these ever present, unfair, and sometimes illegal practices, blacks and other minority victims will only become more and more disillusioned. Such callous, willful disrespect and unfair treatment by the telecommunications industry may not by itself cause a long, hot summer, but it could bring about a long, cold winter in which blacks and other minorities combine their resources, collectively deciding not to patronize the film and broadcast industry, collectively deciding not to support those advertising sponsors.

There is a growing suspicion in the minority community that a conspiracy exists among the producers, networks, and studios to exclude minorities from fair and meaningful participation in motion picture and TV programing.

We, therefore, call for an investigation to expose and end this destructive and insidious practice.

In conclusion, we hereby urge this committee to pursue the enactment of legislation guaranteeing that a fair and equitable allocation of a portion of the dollars spent for the creation of programing be allocated to contracts with minority-owned and controlled production companies.

Gentlemen, I thank you.

Mr. LELAND. Thank you, Mr. Hooks.

Mr. Casey.

STATEMENT OF BERNIE CASEY

Mr. CASEY. Imagery is information. The perception of misinformation always brings about a misperception. The dissemination of ill-perceived information begins to foster a collective ignorance that is devastating in its contemplation.

Proper imagery is proper information. Ill-perceived imagery is misinformation and the lack of imagery is just as harmful as ill-perceived imagery because in both instances, they are lies and lies most certainly are misinformation—harmful in their content and unmistakably wrong in their intent.

When I was very young I was taught that it is not right to tell a lie. That was proper information. But what I could not comprehend was that in many instances those persons that espoused that posi-

tion were in themselves liars, and that seemed to me to be a serious breach of integrity.

Even at that young age, I could deduce that lies and integrity were not compatible. It is perhaps the lack of integrity that permits people to exist in the dark corridors of mendacity and mendaciousness is all that we can perceive as we watch the kind of programing offered us, particularly as it deals with minorities.

I am sure that there are those persons in the entertainment industry that enter their job place with their integrity intact and their intentions good. However, there is a peril to residing in Babylon and that is the distinct possibility that one will become a Babylonian.

Someone said that all that is needed for evil to succeed is that good men do nothing. I do not support the position that the kind of programing we have to digest is evil. It is not evil in its intent, but it is disparately evil in its result because it is full of misinformation and mendacity.

We of the community of color come to those persons in decision-making capacity time and again with our hearts thumping full of promise and our bosoms full of possibilities.

We come to those persons earnestly hoping that their integrity has not been injured and that they will stand fast as good men, just men, as men who stand for fairness, men who accept their responsibility to the viewership to not abuse the imagery of people of color.

Each time we stand pregnant with anticipation of how things ought to be and those men continue to give us the collective Mr. T.

We have no intention of swallowing the old bromide that it is just entertainment. We as people of color cannot afford the callousness excercised upon us by insensitive people making decisions that are thoughtless but hardly thought provoking—by decisions that are careful only in their exclusion of people of color, decisions that continue to perpetuate the kind of imagery that warps the psyche of the viewership for generations.

It is said that lies will die their own death and the truth will live forever. That phrase is obviously premedia.

It had to have been said when people continued the oral tradition, because we have all witnessed some lies in the media that have refused to die, the lie of misinformation, the lie of misrepresentation, and the lie of underestimation.

The media has continuously underestimated the intelligence and endurance of the viewership as they refuse to accept responsibility for their deeds. There is a serious lurch in the collective integrity of people who make decisions with regard to people of color on television.

If you feel this is a falacious statement, you simply need to watch a few nights of entertainment via that electronic telecommunications phenomenon, the tube, the tube that programs us whether we want to be or not.

You can witness for yourself I speak the truth. The longevity of the misinformation has such catastrophic possibilities as to be terrifying in the extreme. The incessant, insistant, unyielding redundancy of the kinds of imagery we confront simply has to be addressed.

It has to be addressed by the people responsible for it just as we have to address the people responsible for it. Some good men must come forth, some strong men, some men with integrity to say simply, "stop it, in the name of what is right, stop it. In the name of what is fair, stop it. For the sake of our children, stop it."

Imagery, imagination. Imagination should be the springboard to enlightenment and the image the wellspring of truth.

What better way to bring about enlightened understanding than that of proper imagery. What better way to lessen the anxiety and fears of those who are represented and those who are not than by proper imagery.

What better way to undergird the slipping sense of well-being of a people made desperate by a society that does not seem to care than that of proper imagery.

What better way to show the world that many kinds of people do exist than to tell them the lie that they do not than by proper imagery. It does not take magic, just imagination and commitment.

It is not an act of God that television is so white. It is a conscious decision made by white men who think the world is all white and refuse to understand that it is not. Things can change.

Things have to change and they will change if those persons in decisionmaking capacities embrace their own integrity and come forth for what is right, come forth for truth, good men, strong men, righteous men.

In the face of this need, I recommend by this committee a full-scale investigation into the tawdry hiring practices of this industry. The minority community is suspicious of a conspiratorial effort by networks and producers to exclude them from the workplace.

I urge the passage of legislation guaranteeing a substantial and equitableal location of the dollars spent by the industry to be contracted by minority-owned and controlled companies for the creation and production of product.

I give you now my colleague in continuation, Ms. Sumi Haru.

STATEMENT OF SUMI HARU

Ms. HARU. Mr. Chairman, members of the subcommittee, I am here to place before you my concerns as a person of color and a woman. I wept the day my daughter told me a classmate of hers wished he weren't Filipino, but would rather be white. I still cringe when my mother tells me to stay out of the Sun because I am getting too dark, and I am filled with sadness every time I see an Asian-Pacific American trying to emulate the white standards set by the media.

The media you are considering is one of the most powerful educational tools in the world. It is estimated that the average family watches 6½ hours of television a day, which means a young person may spend more time with a TV set than he or she does with parents, teachers, or clergy.

A distinguished actress and fellow national board member of Screen Actors Guild, Janet MacLaughlin, and I did a study for our ethnic equal employment committee to see how much influence television has on individuals' perceptions of others.

Among the organizations participating in our experiment were a predominantly minority media class at California State University of Los Angeles, the Screen Actors Guild EEOC in Dallas, Federally Employed Women, Service Employees International Union, Los Angeles County Commission on the Status of Women, Asian-Pacific American Women's Conference, Coalition of Labor Union Women, and a Los Angeles-based Equal Opportunity League, which is comprised of affirmative action officers of major corporations.

We asked the participant to assume the position of chief creative officer of a network with complete creative control. In such position they were asked to cast actors of their choice, or highly visible people such as elected officials in a new prime-time series called "Method of Operation, Hollywood."

The cast consisted of criminals, prosecuting and defense attorneys, a police officer, the officer's of spouse and child, a drugpusher, a drug addict, and the proprietor of an adult book shop. Neither sex nor ethnicity were specified in any of the rules. In every session the participants cast the series exactly as the network or independent producers would. Seventy-five percent men, 25 percent women, 90 percent white, and 10 percent people of color.

Among their reasons for casting this way were this is what they thought the public would like to see, or they never thought a prosecuting attorney being a minority woman or they just didn't know any minorities to put in the parts.

It appears the public is being brainwashed. Seldom do we see on the screen a minority woman carrying a briefcase, a Hispanic elected official, a native American Indian doctor, or next-door neighbors who are people of color. Seldom do we see ourselves protrayed as an integral part of the American mainstream.

Perhaps this is why the Asian-Pacific Americans often hear: "My, you speak perfect English; how long have you been in our country?"

Clearly the stereotypes on the screen are superimposed in real life, thus preventing Asian-Pacific Americans from reaching upper management levels. Perhaps the bombardment of Caucasians on the screen prevents our children from developing a positive self-image and instead makes them wish they had blue eyes and blond hair. The most famous Asians on the screen are still Fu Manchu and Charlie Chan, both of whom keep reappearing in updated versions, and still played by whites in yellow face. These characters are not our idea of positve role models.

Another contributing factor for the nonexistence of people of color and particularly minority while on the screen is a survey known as the TVQ, which ranks performers on their visibility. There are approximately 900 living performers on the list plus athletes, Howard Cosell, cartoon characters, and animals. If one does not appear on the TVQ, they are most often not acceptable for major roles on television.

People of color seldom have the opportunity to become visible enough to get on the Q list. This form of discrimination is not unlike a blacklist.

Our unions and our communities have been appealing to the industry for years to bring our reality to the screen, but we have been met with deaf ears. We are sure that if more of these deci-

sionmakers were people of color, our concerns would be more readily heard and understood.

We have sat through numerous meetings with decisionmakers presenting our statistics with everyone shaking their heads and agreeing how important the statistics are and making promises to do better. We have negotiated affirmative action into our creative unions' contracts but still no positive change has been made since the mid-seventies, and unfortunately, gentlemen, in too many areas there has been a retrogression.

Complaints have been filed wih the Equal Employment Opportunity Commission against the three networks and their producer suppliers, but those complaints are gathering dust and cobwebs, not being pursued, and the staff members refuse to respond to claimants' phone calls and letters. It is hard to imagine why people of color should continue to consume product which fails to reflect them. A conscious effort was made to change textbooks to show more than the white mommy and daddy, Spot and the picket fence. It is time for the television industry to acknowledge its consumers.

In order to accomplish a change, we call for an investigation to expose the suspected conspiracy between the networks, producers and studios to keep people of color from fair and meaningful full participation in the television and motion picture industry.

In conclusion, we hereby urge this committee to pursue the enactment of legislation guaranteeing that a fair and equitable portion of the dollars spent for creation of programing are allocated to contracts with minority-owned and controlled firms.

Thank you. Now my colleague, Mr. Esparza.

Mr. LELAND. Thank you. Mr. Esparza.

STATEMENT OF MOCTESUMA ESPARZA

Mr. ESPARZA. Mr. Chairman, ladies and gentlemen, members of the subcommittee, I am honored to be a part of the panel with such great American artists. My name is Moctesuma Esparza. I am a neighbor of a community a few light years east of Hollywood called East Los Angeles. During the 11 years since I graduated from the UCLA master's program in film and television, I have been often cited as one of the exceptions, a Chicano who has achieved a measure of success in the entertainment industry, an Emmy, a Clio, and an Academy Award nomination, the president and owner of three cable TV companies, producer of a feature film currently in theatrical release by a major distributor. The tragedy is that I am the exception, and yet my achievements are modest.

This should not be the case in an industry where there have always been men and women of vision and courage, individuals who understand and accept the moral and ethical responsibility of the pervasive power of film and television to mold and shape public opinions, values and morals.

I am unable to read into the hearts of the leaders of the studios, networks and ad agencies who wield the authority in our industry. I assume that they are men of goodwill. I say men because there are no women in these posts.

Unfortunately, the composite of their wills is manifest as an industry that is unwilling to change. The few improvements the industry can cite, the creation of some horizontal integration in the trade and craft fields, some public affairs programs were, and continue to be, the result of minimal governmental regulations. Yet no Hispanics are employed as staff writers by any of the networks or studios. No Hispanics are employed in a position of even marginal authority in any of the program departments of the networks or story departments of the studios. No Hispanic is employed in any position of authority or responsibiltiy in any network or studio, with the exception of the area of governmental relations and public affairs. And that is only at one network.

My colleagues tell me that there are five black decisionmakers in the entire industry, and we know of no Asian or American Indian executives. There are no Hispanic producers working for a network program or for a studio. There are three black producers working for network shows, only one in a dramatic series, and none for a studio. So long as these truths continue, our country cannot begin to address the moral decline in the quality of our entertainment.

How can we enrich the lives of the children of our country if what they see on the screen does not reflect the reality of all of America, and what they do see appeals to our baser instincts of sex with violence.

Not until there is also vertical integration in all areas of management will blacks, Asians, American Indians, and Hispanics, who are 30 percent of the entertainment industry's marketplace, then see themselves represented on the screen, and in nonstereotyping roles. The core of the problem, as I have experienced it, is the almost total absence of minorities in the executive suites of the networks and studios, not to mention the boardrooms. Minorities in the entertainment industry are not asking for reparations for past injustices. We are part of the economic fabric of America, and are entitled to share and participate in the rewards, not just the risks, because we have talent and ability and something to offer.

Our industry needs help not only in adjusting the economic interests of networks and studios, but also in bringing equity to the millions of blacks, Asians, American Indians, and Hispanics whose future is the future of America.

There is a strong suspicion in the minority community that a conspiracy exists among the producers, networks, and studios, to exclude minorities from fair and meaningful participation in motion pictures and TV programs. We call for an investigation to expose and end this despicable and insidious practice.

In conclusion, I also urge this committee to pursue the enactment of legislation guaranteeing that a fair and equitable portion of the dollars spent for the creation of programing be allocated to contracts with minority-owned and controlled production firms.

Thank you very much. My colleague, Mr. Carter.

Mr. LELAND. Thank you. Mr. Carter.

STATEMENT OF TERRY CARTER

Mr. CARTER. Distinguished members of the subcommittee: The recent 20th Anniversary March on Washington provided us all

with not only a reminder of how far we have come since those early days of the civil rights struggle, but it also gave us a chance for new commitment in the struggle to achieve full inclusion into the American system. There have been in industry and society measurable gains, though so much more is yet to be done. As a result of that struggle of the sixties and seventies, Americans of all colors have won the right to eat together, to pray together, to sit together, to live side by side, anywhere in our Nation. The right but not the opportunity.

Black and brown political gains have been just this side of miraculous, when one considers how minorities were previously systematically shut out of the processes of government decisionmaking. Today, minority Americans are wielding a share of power and responsibility in many areas of commerce and industry. Except in Hollywood.

Despite what you may have heard to the contrary, racism is alive and well in Hollywood. With very few exceptions, minority producers and would-be network and studio executives of color are shut out of the system. The vast majority of actors, directors, and writers of color seldom work. On the rare occasion when they do, they are usually hired for less money than their white counterparts and the assignments they are given are usually second string.

The perspective Hollywood reflects of America and the world is a white perspective. Reality tells us that there are Asian lawyers, native American engineers, Latino neurosurgeons, and black astronauts. But Hollywood tells us there are not. Reality tells us that Washington, D.C., is a multiracial city, but a television show, a soap opera called "Capital," shows us a whites-only perspective of the Nation's Capital. Talk about fantasy! The television and motion picture industry is out of step with reality.

I believe that there is a solution to this situation, one that is based on an accepted precedent, one that can provide new opportunities for creativity as well as for profit for all concerned. Last month, President Reagan signed an executive order designed to increase opportunities for minority entrepreneurs. That executive order requires each Federal agency to create and implement a minority business enterprise development plan.

It was apparently a followup to Mr. Reagan's earlier declared objective to assist minority entrepreneurs to help build a strong economic base for the Nation. I submit that a similar plan could work wonders within the telecommunications industry—a minority business enterprise development plan for the television and motion picture industry.

With the guidance of your committee and a redirected FCC, the industry could be encouraged to set aside a portion of its revenue for reinvestment with minority producers. Please note that I said "reinvestment." I am not speaking of a handout, but a handshake. Investment holds the potential for profit.

This kind of set-aside, having ample precedent in Government procurement history, could nourish a generation of entrepreneurs and creative artists who might offer the industry much-needed enrichment.

Sylvester "Pat" Weaver, former president of NBC, in an address to the Hollywood Radio and TV Society last Tuesday, called for

major innovative changes in network programing or else the networks "are going to be in terrible trouble."

Well, we would like to provide that innovation. We minority producers, directors, and writers would like to help the networks retain their audiences and resist the onslaught of new technologies. We offer them the opportunity for an infusion of cultural diversity, new ideas, and new products. The inclusion of minority producers, directors, and writers could be a major source of the urgently needed innovation of which Mr. Weaver spoke. I believe Mr. Weaver is correct when he warns of "terrible trouble" in store for the networks.

I believe we are moving closer and closer to a consumer rebellion against the putdown and shutout that blacks and other minorities are made subject to, by the networks and studios. Many Americans are fed up with what they see as a conspiracy to retain the last major bastion of de facto segregation: prime-time television. What if one day all the black and brown television viewers in America—and their white supporters—were to stop watching TV—to demonstrate their discontent, their outrage over the way minority people are put down or shut out when it comes to the casting of dramatic roles on American TV?

What if millions of minority consumers and white sympathizers were to turn their backs on the television screen for a whole month? What if that action were to mushroom and extend itself to bypassing a select list of advertisers who support network programs? How would it affect the sale of television sets, cars, soap, corn flakes, soft drinks, beer, fast foods? How many millions of dollars would be lost? Is this what it takes to get a measure of justice, fair play?

I know that there is another way. Every sound business reinvests a portion of its earnings to stimulate more business, new products, new markets, with a view toward increased productivity. What I am suggesting is that minority producers who have been heretofore excluded from the mainstream become the industry's "new products division," that the industry make a commitment to sit down and negotiate a formula whereby the major producers and the networks create a partnership with the community of minority producers for the development of an innovative product. This could happen with your help.

The industry could be induced to commit contractually a portion of their revenues to finance the development and production of movies and television programs produced by the native American, Asian, Latin, and black communities, sharing in the promise as well as the profits derived therefrom. Perhaps significant lasting gains can be made, for all concerned.

We urge you to investigate the possibilities. We don't need another committee report to tell us how bad off we are. Just look at the statistics, ask how many minority producers, directors, writers, cinematographers, musicians, and network and studio executives there are. By now, it should be clear to all of us that the industry will not change on its own.

We therefore urge you to provide leadership on this issue. We urge you to help create a constructive dialogue between the industry establishment and the minority communities, a dialogue of ne-

gotiation. We urge you to pursue the enactment of legislation which will guarantee a fair and equitable allocation of programing dollars to minority producers.

I submit to you that this is the only way to bring about fair treatment of minorities on the screen and behind the scenes in the telecommunications industry.

Thank you.

Mr. LELAND. I thank all of you for your very wonderful testimony.

Mr. POITIER. Due to the lateness of the hour, two of us must be off to try and catch a plane. The others will represent us in any questioning that you may have, comments you may want to elicit from us.

Mr. LELAND. Thank you very much for your participation and leadership. Thank you so much.

The Chair would like for the gentlemen and women who have to leave to know that the record will be open for any further comments that you might have.

Mr. POITIER. Thank you.

Mr. LELAND. Mr. Carter, in a recent article you were mentioned as one of a number of black actors who has become a TV director. Is this a reaction to the lack of quality roles for black actors, or is it an attempt to increase minority participation behind the scenes?

Mr. CARTER. I am speaking for myself on this issue, as you asked me to. I recognize that there are many minority actors who have become very frustrated waiting for the telephone to ring, waiting for someone to decide to begin with that they would like to have a minority person play a role, and then it filters down to the idea of calling that particular actor.

It is true that my experience in this industry leaves much to be desired. I came off of a series, my third series, in 1979. I was doing Battle Star Galactica then, having already done the Phil Silvers Show on CBS and McCloud on NBS.

Battle Star Galactica was on ABC so I had done all three networks.

I came off of that series feeling pretty high and confident that my career was on a very steady level.

In March of 1979, that is 4½ years ago—in the last 4½ years, I have worked a total of 3 weeks as an actor, in 4½ years.

In one of those 3 weeks, I employed myself because I am also a producer.

Now, I am not saying this because I have sour grapes or because I am trying to evoke your sympathy, but you did ask me a question and I would like to respond to it fully.

I think that my fate is not unusual because I have many friends who are better actors and actresses than I am, who work less than I have in the industry.

It occurred to me long before I got to that gully that I found myself in that, if I am going to have any kind of control over my destiny as a human being, as well as an artist, that I had better become a producer and a director.

The fact is that I had aspired to move in that direction anyway, and when I started my company I was in the middle of the series

McCloud, and I found myself doing both things at the same time because they were fulfilling needs of mine.

Fortunately for me, I have been able to make a very good living as a producer and as a director, and part of the reason, incidentally, part of the tribute has to go to the Federal Government for having a minority set-aside program, because I, as a producer, was able to take advantage of that inasmuch as there was very little opportunity for me as a minority producer in the private sector, but the minority set-aside development program called the 8-A set-aside program, has enabled me to gain a great deal of experience and also to survive as a human being at my craft, and this is why I am so confident that the success of this application can bring success for us in the private sector.

Unfortunately, the evils, the weaknesses of the set-aside program have been given a great deal of publicity. I have seen on "60 Minutes" the bogus presidents of companies who happen to be minority with the companies who are white who didn't even know the addresses of the offices of the companies that they worked for, but I must tell you that there are many of us out here who are hard working, who are sincerely minority producers, and who are attempting very hard to become competitive in the private sector.

I have just finished producing a television series that is going to be on PBS, but I am still trying to get at bat with the networks and the major studios. I hope that answers your question, sir.

Mr. LELAND. It does.

Let me just ask you if I can, briefly, I guess you enjoy doing all of what you are doing, producing, director, but is acting a greater passion for you? Is it that you want to be seen?

I would just like to see what it is that you choose to do and what you are least allowed to do.

Mr. CARTER. Sir, I consider that a very personal question, but I will attempt to answer it.

I think that I am most fulfilled when I am able to do many things, and I think if I were given an opportunity to work as an actor in a very challenging role, that I might put everything else aside and deal with that challenge because I find that that is the only way I can move from one day to the next to deal with the challenge at hand.

Unfortunately, I have not been offered any challenging roles. I am not saying I haven't been offered any roles. Every actor has to be selective in what he or she pursues, and I have been offered roles that I turned down in the 4½ years, but nothing of substance, nothing meaningful is offered to me, and for the most part is not offered to my compatriots.

Mr. LELAND. Mr. Hooks, last year the network had "Sophisticated Gents," a program which dealt in a mature manner with black life. It is my understanding that filming of the program was completed a full 2 years before the show was aired, and that the network did not actively promote the show at the time it was aired.

Why was the show on the network shelf for so long before it was aired?

Mr. HOOKS. First of all, Congressman, it was more like three years from the time we finished shooting the film until the time NBC decided to take it off the shelf.

Incidentally, it is the first time they kept any movie on the shelf for that long. "Sophisticated Gents" was a story told not in comedy, but a dramatic portrayal of nine black men, very strong, very sensitive, middle-class, upper middle-class, lower class black men and their wives and their families and the stories were dramatic.

The stories made sense. The characters were very, very fine characters for the most part.

It appears that the networks did not, could not deal with the dramatic aspects of the show. There were no buffoons. There were no comedic characters.

My estimate is that the characters were powerful and positive, and in my experience as an actor and a producer in the industry, the networks, for some strange reason, are afraid to put those kind of characters into their regional affiliates, and I think that they had a lot of feedback, negative feedback from the movie in that sense, so it was just kept on the shelf until the administration changed, and when the administration changed they had gotten so much heat from the public, mainly the minority public, to release it, that the new president, Grant Tinker, then decided to release it.

There was another film that had the same kind of history and that was "Maya Angelou's Sister, Sister," which they kept on the shelf also for over 2 years.

I don't know the real reasons. I can only speculate that they had problems dealing with their affiliates in the South or whatever. It played a large role in the release of both films black material.

Mr. LELAND. Ms. Huru, is there an abundance of Asian-Pacific actors, actresses, writers, producers, directors? Are they available to work and just aren't working?

Ms. HARU. There are definitely a great number of Asian-Pacific-American artists. I represent an organization called the Association of American Pacific Artists which is comprised of people like Jimmy Hong and Mako and Beulah Quo. We have writers, producers, directors. I do it and I happen to be one of those fortunate ones that has a job. We are there but we are not part of America.

Whenever we are seen in a script, there usually is some dialog from another character explaining why an Asian-Pacific is in that scene. It is just not taken for granted that we are Americans, and we sort of just belong here, and no explanation need be given.

We have in the Writers' Guild very few Asian-Pacifics. We have very few Asian-Pacific directors in the Guild, and we have very few producers who are actually producing for the networks, but they are there and they are trained, and when there is work available, it won't be as though they just came out of the woodwork.

They have always been there. They just haven't been exposed.

Mr. LELAND. Mr. Esparza, you talked about having received one, I think, Emmy; you have been nominated for an Oscar, and I forget all of the other awards that you received.

Approximately 30 percent of my district is Chicano, and I have been working to try to make sure that Hispanics, as well as blacks, are elevated to equal citizenwhip with all Americans in terms of full participation and opportunity, and so forth.

I find it amazing that, but having watched television, that there is little or no participation of Hispanics behind or in front of the cameras, and I will go back to the example of Dallas. I watched

Dallas only a few times myself, but it has been brought to my attention by other people who have watched it over and over again, and have never seen one black or one Hispanic in the movie, in the TV series.

I also was reminded about Dallas by a group of black and Hispanic kids, who went to Israel. They came back to Texas and were responding to questions from a group of people who wanted to hear about their experiences. One of the black kids related an incident that ocurred in Israel. One of the black kids was asked about his experiences in America and where he was from. He said the group was from Texas. The Israelis said, you couldn't be from Texas because we watch Dallas in Israel and all you see is white people there, so how is it you can be from Texas?

I have seen very few movies produced that had Chicanos in them. "Chico and The Man" I think was the only Hispanic. I am not sure. Was Chico a Chicano?

Mr. ESPARZA. He was a Puerto Rican, Puerto Rican-Hungarian.

Mr. LELAND. Anyway, I have seen very little evidence that there is any representation in the industry of Hispanic actors and actresses or even Hispanic writers, producers, and directors, of Hispanics.

Mr. ESPARZA. There is a tremendous abundance of Hispanics who are actors, directors, writers. In Los Angeles alone there are four theater groups made up of Hispanics who mount plays and have regular seasons, and basically do this because they otherwise would not be able to practice their craft at all, their art, at all.

Many Hispanics have been knocking at the doorsteps of Hollywood, and not just solely because we wish to be a part of the industry, but because we probably comprise 50 percent of the population of the actual town of Hollywood, and have been a part of this country since before the country existed.

I often get asked where was I born, in Mexico, and I tell them, well, no, I was born in Los Angeles, and my wife, who is also a Chicana, her family goes back in this country for about 400 years in New Mexico, so we are definitely part of the landscape and find ourselves unable to have any access in Hollywood.

The few successes that I have had in my career have been the result largely of the affirmative action pushes in public affairs, the documentaries that I produced that won the awards, and public broadcasting.

The feature film that is currently in release was originally underwritten by the Endowment of the Humanities, and the Corporation for Public Broadcasting and American Playhouse.

It is called the "Ballad of Gregorio Cortez." It happens to be the very first film that has ever been on public broadcasting and then considered good enough by a major Hollywood studio, in this case Embassy, to go into theaters and it is now released and is doing well.

The screenplay was available for the studios and for the networks before we made it for PBS, but at that time the answer that I got was that it was just not something that was considered commercial. They didn't think it wasn't good. They thought it wasn't commercial, that Hispanics, minorities, are not commercial.

Mr. LELAND. Thank you, Mr. Esparza.

I am going to have to leave and Chairman Wirth is going to assume the chair.

Let me just say something. We were discussing a minute ago the absence of coverage of today's proceedings by the commercial TV stations today.

I am dismayed that we had such a broad array of personalities who are very well respected in their fields especially in the minority communities, but even in the community at large, people like Mr. Hooks and Mr. Carter, of course, and Mr. Poitier, and Mr. Casey, names that people automatically recognize at when they hear them, and there has been little interest from the commercial TV news or organizations.

Had this been a hearing where Alan Alda or one of our white counterparts had been here, there would have been all kinds of television news organizations represented here. I understand that a couple of the networks were represented here earlier but their lack of interest in this topic amazed me. Maybe it is because they didn't want America to learn the criticism that you are conveying today.

I am happy and proud of the fact that C-Span is here, however, because I think C-Span covers something like 15 million homes in America, and the word is getting out.

Thank God for C-Span, but it really amazes me that the networks did not see fit to come and cover what you had to say today.

Mr. Carter.

Mr. CARTER. Congressman, with your permission, I would like to make a comment that occurred to me when you were talking about Dallas.

I have learned, as you may have too, that Dallas is a very popular show in other parts of the world. It is very, very popular in all corners of Africa and in Europe and probably in many other——

Mr. LELAND. If I might interrupt you, I was in Zimbabwe recently and I have a cowboy hat, a straw cowboy hat, and some of the kids would run up to me and say, J.R., J.R., J.R.

Mr. CARTER. Yes. That has both positive and negative ramificiations. When people in other lands see the America that is portrayed on television, just think of what a hard job it gives our State Department, what a hole our foreign policy has to dig its way out of, because what we are saying to all those people in all those lands, the majority of the world who are not white, is that you really don't count in America.

Even though we have black, and Asian, and American people in the United States, they are just not important enough to put in shows, so we can depict a city like Washington, D.C., and call the capital, or Dallas, and we will work around very easily those people who happen to be of color.

How do you think a Nigerian or a person in Zimbabwe or in Sri Lanka responds to that?

They may not respond to it verbally, but it makes our task of making those people in those nations think that we are guardians of democracy, it makes our task even more difficult, so what we are talking about here is something which damages all of us as Americans.

We have talked about some other aspects of it, but I think we should also look at that too.

We have a responsibility.

Now, if the air waves do belong to the public, as has been said, and as Chairman Wirth has said on numerous occasions, we have got to protect those air waves because those air waves speak to us. They speak for us, and they speak for us to other people. We have got to think about every manifestation of every image that is on the air.

Now, none of us certainly wants Government supervision or control. We certainly cherish freedom of speech, but there are limits to freedom of speech too, such as the old proverbial yelling "Fire" in a crowded theater, and I think that we can find parallels that can make us recognize that we need greater oversight on the part of the FCC, and more important, the Congress, our elected representatives, to make sure that our air waves are responsive to and responsible to the public.

Mr. LELAND. Thank you. Let me say before I leave that Mrs. Collins from Illinois wanted to attend these hearings. At the present time, she is en route from her district and expresses her regrets for not being here. She is very much involved in this issue. She is a member of the committee, and has offered her leadership during his tenure on the committee. As a matter of fact she is holding a hearing on the problems of minority employment and ownership in the media on Friday as a part of Congressional Black Caucus Week.

I want to thank all of you personally and say to you that I hope that my colleagues will address the issue of the conspiracy that you raise because I heard each one of you say that at the end of your presentations.

I think that charge raises some very interesting questions and I hope this committee will further endeavor to pursue that issue.

Thank you very much, Mr. Chairman.

Mr. WIRTH. Thank you, Mr. Leland.

Mr. Bryant.

Mr. BRYANT. I would like to join Mickey Leland in thanking all of you who have been here. All of you have already made it in your industry obviously. You are not here speaking only for yourselves, but for a lot of other people.

We have been here for nearly 4 hours and it has been difficult for me, in the course of the two panels, to develop a clear idea of what specific action this committee ought to take if we are to address the problem that we all agree exists. I think everybody—to some extent especially with this committee—has been preaching to the choir this morning because most of us came with similar views of the circumstances that you have.

Most of the solutions that have been mentioned this morning relate to encouraging minority ownership of production studios or of the broadcast outlets themselves, and I wonder, in view of the various levels at which decisions that are discriminatory are made, if simply addressing ownership is enough.

All of us up here, I believe, are presently cosponsoring legislation to try to encourage more minority ownership by different entities. That is all that I have heard discussed this morning. I wonder if that is enough.

Ms. HARU. It would be very hard for us to own a network. Let's be realistic, gentlemen.

It is very difficult now when you look at the U.S. Commission on Civil Rights statistics what ownership there is. When we were thinking of having CBS getting into cable and if we owned cable, CBS could produce so much more and own many more stations than we that their product would go out across the Nation, while if one or two of us owned a cable station, we may not have the money to put into production.

We just couldn't compete with the triopoly that you were speaking of. I don't see why at this point we should talk about ownership only, because there are a plethora of jobs from the top on down in every studio, in every network, in every independent station, in every O&O and affiliate where we should be employed in the total creative process, so ownership is not the only answer. It is one among many.

Mr. BRYANT. My question, though, is what else can we do?

You had one creative solution which related, I think, to——

Mr. CARTER. I believe that there is a great deal that we can do that we have not done and that we have not spoken about. I am very sensitive to Chairman Wirth's call for quantification.

I think that that is the solution. I did not use that word in my remarks but I think the essence of it was that I do feel that we can quantify our—the solution to our grievances.

I think that we could work out with your help, with the help of legislation, a system whereby the television industry, the telecommunications industry, becomes as responsive to the minority community as other industries are, and I know that by legislation there are guarantees in many industries that have been delinquent in the area of affirmative action.

I am not speaking merely of jobs, you see. I am speaking of participation and the kind of participation I am talking about deal with that pervasive aspect of telecommunications which has to do with the images on the screen.

I am saying to you that if legislation, if the Congress could grab the networks and the producers by the scruff of the neck and make them sit down and meet with us and discuss how we can help them become more responsive to the world's needs in a manner that they are not fulfilling their responsibility, I think that what could be gained thereby, first of all, if minority producers are by contract getting a piece of the action—if you want to put it so crudely—then obviously more minority people are going to be working, more minority programing is going to be made, whether on network or syndication or cable or home video cassette or theatrical rerun or foreign sales, a product will exist that does not exist today, in addition to which all of those minority producers will be gaining the kind of experience that can help them to compete with the Aaron Spellings of the world.

I had an executive tell me that the main reason they don't deal with minority producers is minority producers don't have a track record. That is because Aaron Spelling and the studios are at the finish line and we can't get out of the starting gate.

They deal with something that they have caused as if that is a justification. If we can quantify, and we can, if I may give you an

example, the prime time syndication and interest issue is, as I understand, an $800 million—I am not used to using those figures—$800 million annual issue.

If 20 percent of that small pie—small relative to the billions of dollars of revenue that come into the industry—if 20 percent of that small pie, $160 million, were allocated by the industry to minority production—and when I say minority, I obviously mean Native American and Latino and black and Asian, and probably others that might apply—if that were allocated to us, think of how much product could be made from that, and maybe we would convince the networks that some of the product we put together might be fine for 8 o'clock on Monday nights or fine to release as a theatrical film or be fine to be syndicated and shown on the owned and operated stations.

It would give us an opportunity to gain some of the experience and the capital required to be able to stand on our own feet and would help to satisfy some of our needs as a community to see our images on television.

I see that it would be a shot in the arm. I think that quantification is a word that capsulizes its quintessential definition.

Mr. ESPARZA. I would like to second Mr. Carter's ideas. I feel that in order to solve the problems that we are faced with, that we must have the access to production dollars to produce programing, to create viable companies.

Many times the networks have raised the bugaboo of violation of their first amendment right of freedom of speech.

When people start dictating to them what kind of programing they should put on television, they scream that it is a violation of their rights for somebody to tell them that they should reflect the reality of America.

I don't believe that there is anything involved with money that involves the first amendment. Dollars can be allocated, and then the programing that is produced with that is free of that particular complaint that they keep talking about.

Certainly the vertical integration of the employment practices of the networks and studios and independent companies must be addressed. We have no decisionmakers at the top levels.

We must become a part of the institutions that create this programing, a part, a separate and in addition to having production companies. Not everybody wishes to take those sort of risks, because one must be willing to take risks when one goes into private business.

I personally do hold the aspiration of owning a network and would not give that up. Anyone—I will take any of them. And now own three cable companies and one could have said that that was a pipedream for someone coming from East L.A. whose father was a cook, but nevertheless I have achieved that dream and I feel that I have the capacity to take more business risks and risks of the security of my children that my wife is not too happy about, but I will continue to do it.

I must emphasize that vertical integration in employment is of fundamental importance and legislation can insure that that occurs and that there is also the capital available for production by

minority owned and controlled firms, not by sham companies that are set up to circumvent legislation that might require it.

I think that that would be a concrete step forward that this committee could pursue.

Mr. WIRTH. Mr. Bryant's time has expired. Are there other comments on his question as to what should we be doing as a subcommittee?

Mr. HOOKS. If I may, Mr. Chairman, I agree with my distinguished colleagues, but I would like to mention that if we indeed do not maintain comparative renewal—I was listening earlier to the panel as it relates to minority programing ownership, employment.

Needless to say, if we did not maintain it, there would be, I think, a tremendous loss, and so I wanted to simply add that to the record.

I would like to go back and add for the record that to maintain comparative renewal is of extreme importance for the high quantification standard.

Mr. WIRTH. We have one witness who has joined us who had not been able to get here earlier. You might want to come to the witness table now, Mr. Bourne.

Mr. BOURNE. No.

Mr. WIRTH. Mr. Bourne, if you have testimony, we will be happy to include that in the record. Mr. Bourne is also a producer from New York City. [See p. 124.]

Mr. Swift.

Mr. SWIFT. Thank you, Mr. Chairman.

First of all, I might note this has been the most literate testimony that I have heard since I have been in Congress, and perhaps, Mr. Chairman, we should try to include artists more directly so we don't totally forget the proper use of the English language around here. We are subject to a lot of attorneys.

Mr. ESPARZA. So are we.

Mr. SWIFT. Second, in my earlier questioning, the question about whether or not minorities were adequately portrayed in soap operas came up, and Mr. Hooks, who was at that time not at the table, seemed to have something urgent to say, and I think we should fill in the record at that point.

I think I had spun off of Dr. MacDonald saying that there were some accurate representations. You seemed to disagree.

Mr. HOOKS. We simply wanted to stress that what you were saying to the previous panel, we have dealt with the question probably more often than they. But the Julia thing that you mentioned—I recall also the experience of the Oreo repurcussions.

It at the time was, I think, valid based on Congressman Leland's response to the time and to the motives of the networks to avoid, elude the realities of black lifestyles, what was happening in the black community, what in some instances is still happening because of the lack of concern for meaningful black portrayals on television.

But nobody was answering the question, and I simply wanted to—and then, of course, Mr. Leland referred to the times. But I think that—I was one—you probably heard my cries about the Oreo. At the time to me it was indeed not in order. But in the same instance, it was acceptable to me as a positive step, but certainly I

would have produced many more images before the "Julia" Oreo image.

Mr. SWIFT. I just wanted to give you a chance because you obviously felt stronger about it.

Mr. HOOKS. I wish I could have shouted it from there.

Mr. SWIFT. It is true that we shouldn't expect minorities to react to anything with unanimity any more than we should expect anybody else? You mentioned that there aren't any blacks in the TV show "Capitol." That is only one of an almost unlimited number of inaccuracies, in "Capitol," which raises the question of whether or not what you people are pleading for is some realistic representation in a field that is often unrealistic in every aspect.

I don't know how much truth there is about Texas in "Dallas" or a lot of other programs. I am not suggesting you are, therefore, wrong for pleading for it, but I think it shows the dimension of the problem you are facing because much of what is on television doesn't represent truth about anything to anybody

Mr. CARTER. May I respond?

What you say is true. The networks and the producers will hasten to say that they are not putting on documentaries, that they are not necessarily meaning to portray reality.

Mr. SWIFT. They are obviously successful at not doing that.

Mr. CARTER. It always works in our disfavor, because if they are not meaning to portray reality, why can't they have a situation where there are more minorities than there are in real life? We talked to them about casting an Asian person in a situation—maybe there is no Asian doctor in the city of Peoria as a hypothetical example. They will say, "Well, there are no Asian doctors here, so we couldn't have an Asian doctor."

Yet they will have nuns that fly. Nobody questions that. They will have genies coming out of a bottle, dogs and horses that talk, and cars that talk. That kind of fantasy is OK, but when it comes to fantasizing what a heterogenous world this could be, that is beyond them. Give us diverse representation.

I would like to make a comment about the controversy over Julia. I happened to be in the minority at the time of the Julia controversy because I did not find Julia offensive. As you have aptly said, we cannot expect black people to be in unanimity on any issue any more than anybody else.

My feeling was that the sad part was that the only thing we can talk about is Julia. If they had several shows on the air and one happened to be an upper middle-class nurse who dressed better than most of us and another happened to be about a teacher who was struggling to pay her rent—I am saying if there were diversity, we wouldn't be dwelling 15 years later on the issue of Julia, but we have little between Julia and 1983 to discuss.

Mr. SWIFT. I guess it would follow that you would not be so upset at the portrayal of Mr. T if he were in the context of a broad range——

Mr. CARTER. Precisely.

Mr. HOOKS. I wanted to speak to that issue. I think the issue is balance. If your white viewer, for instance, complained and did not like Archie Bunker because he was a racist, you could turn the channel and you could get "Hill Street Blues," "St. Elsewhere,"

and you could get a good, strong balance regardless of whether you get a talking horse or a talking car in the process, you would get an interesting diversity, a balance.

If I have George Jefferson running around acting like a buffoon on my television set and I did not want my children to see that, I cannot turn away and get a balance. I cannot turn away and get a black realistic dramatic scene with good, strong role models. We do not have that luxury. It is about balance and diversity. That is one of the main problems with network television today in the programing sense, and the Mr. T's just do not make up for it.

Mr. SWIFT. Could I ask a question to help me understand the imbalance. How did you feel about the program "Paris"? It did not last long.

Mr. HOOKS. I love James Earl Jones. I thought "Paris" was an interesting show, but it was not by any means a black show. There were three black people in the show. James Earl Jones was the leading character.

Mr. SWIFT. He was the boss—it had those kinds of qualities that are useful, are they not, in trying to seek a more balanced image?

Mr. HOOKS. Well, the stories do not. The character of James Earl Jones, the lead character, it was the same as if it were Kojak with a black person.

Mr. SWIFT. Just a police shoot 'em up?

Mr. HOOKS. Yes. White writers wrote the scripts; blacks had no input. The same with the Lou Gossett series, "Lazarus Syndrome." You cannot put a black actor in a lead role and call it a black show or a good, strong black image if you do not deal with what this persons life is about and the situations this person is confronted with.

Mr. SWIFT. That is helpful to me to understand in greater detail what you are saying. Two points. I hope to reinforce something that Miss Huru pointed out, if I can use you, Mr. Carter. Both of us have gray in our hair since you were on McCloud, and I did not recognize you at first, I must admit, though I watched that program and your performance quite regularly. I did not watch "Batlestar Galactica." In terms of this TVQ you mentioned, are you not in the position now of having been in three television series, multiyear series—so you were around for quite awhile—but have not been on the air in 4 years. Does not that TVQ begin to disintegrate, thus making it harder for you to get back in? Do you not have that "Catch 22" kind of a problem?

Mr. CARTER. I am not sure I had a TVQ. The industry pretends that the TVQ does not exist, so I am never in a position to know whether I have a TVQ at all, and if so what it is, how long it lasts. I am afraid I could not answer that question.

I would like to comment on a prior question that you raised. I would like to take a different position from Mr. Hooks about "Paris." Unfortunately there are many, many variables that determine the success or failure of a television show. One of those variables has to do with quality of the writing. One of those variables has to do with the time slot that it is put in, what is it put opposite. One of those variables has to do with how much they promote that show, because the networks as you know have taken often mediocre shows and promoted the heck out of them and made them into successes. The problem as I see it is that we do not have the

luxury of being able to fail. If you look back over the last 10 or 15 years, you can count I guess by now hundreds of shows that have been on television for a very brief time and failed. Nobody said that they failed because they were white shows, but the minute a "Paris" fails, they say well, we gave it the office. We tried and it did not work, so we are excused from doing it any more, and that is the problem that we have; "1941," "Heaven's Gate," the list is very long of colossal failures that have come out of Hollywood, which proves to me that Hollywood does not have the formula for success. If they did they would not violate that formula.

Everything is trial and error, and we want to be included in their experiments and to have the courage of that experiment. If you are going to put on a show, advertise it, let people know that it is on the air. Then if it fails, fine. Maybe it failed because of the time slot or maybe because we did not have the right director on the show, or maybe it failed because we did not promote it enough or because that particular person who happened to be black who was headlining the show was not appealing enough to the audience, but do not make that reflect on all the minority people in the world who should not be represented by one effort on your part, and that is what we suffer from.

Mr. SWIFT. That is a terribly important point, because the variables are infinite, and probably no one really knows why a show fails when you get down to it.

One last point. A professor I had named Taylor created Taylor's first law, which was "Do not ascribe to conspiracy that for which stupidity will suffice for an answer." I gather from things that were said by this panel that stupidity or insensitivity or apathy or even an uncoordinated racism does not suffice for an answer to you people in terms of explaining why you are in the position you are in today; is that correct?

For the record, four heads nodded yes.

Mr. CARTER. Maya, at the risk of speaking too much, I would like to respond to that, sir. "Roots" remains today the highest-rated television miniseries in the history of television. Those greedy people who run the networks, and I call them greedy because, well, they are out to make money, and I think that that seems to be their only concern. Perhaps it is precipitous of me to use that severe word. But if they were greedy enough, they would say "By George, we can make money by putting on programs about black people, because they know it, because "Roots" and other shows have proven it, and yet they do not. So we have to feel that it is no accident, because it should be quite clear to them, and I think it is quite clear to them, that a program which is well produced and well acted and well written is going to be appealing. They know that.

There have been movies that we could touch upon that have been successful—"Sounder," that was on the air last night on cable in Los Angeles—we all remember "Sounder." It was a story about a black family. It had a tremendous success. It warmed the hearts of all colors. Why do we find ourselves in 1983 in this kind of a narrow dead end where our perspectives are so narrow and our memories are so short? It seems to us that it has to be conspiratorial, because if not, why are they not consistently greedy?

Mr. HOOKS. I would also like to say that I was happy that we were able to get the diversity on our panel from the minority community, but I was especially impressed with Dr. Fred MacDonald and his statements on the previous panel.

I was happy that he was able to be here today.

Mr. SWIFT. I thank all of you and I thank the chairman.

Mr. WIRTH. Gentlemen, and Ms. Haru, we thank you very much for being with us again. We greatly appreciate your input.

We have, as you can see, a problem that has parallel tracks. We are concerned, as Mr. Swift has pointed out, and Mr. Bryant, Mr. Leland, and Mrs. Collins and others, with the impact the television has on this country, and how people get socialized by it, the little kid in Africa who ran up to Mickey Leland and said, "J.R., J.R."

One of the things that strikes me is that in all this discussion of education that we have heard in the past 6 months, there is almost no reference in anywhere but the NSF study out last week to the impact that television has on the education of our young.

We hear over and over that television hasn't had a negative impact. It hasn't hurt kids. We know what it can do positively.

Just the "J.R." example was a perfect vignette to give us an idea of how important television is—Mr. Swift talked about growing up in one kind of—I am not sure of the term—a "white area."

I grew up in a white area too. I didn't know what black kids or Jewish kids, or whatever, were. We didn't have television to watch when we were kids.

Mr. SWIFT. We had Amos and Andy, and that was it.

Mr. WIRTH. The impact and the power of that is what we are concerned with. There is a public interest here, as well as the financial interest or the "greed" interest that you are talking about, Mr. Carter.

There is that public interest, and that is what we are trying to get at, the power of this media. How do we define that and if we change the law, how does it get changed to the point where we can define what that public interest is in a more explicit sense. A difficult job.

You are concerned about minority producers and programing. That fits into our hearings as well. We are concerned about that. Mr. Bryant's question remains, the one that we have to cope with, what do we do? We look forward to working with you all, and thank you very much for being with us.

Do any of you have comments that you would like to make for the good of the order in closing?

Ms. HARU. I have one brief thing. We continue to hear about first amendment rights, and I think some consideration must be taken that the first amendment rights of people's color are not being given to us by the fact of our exclusion from the media.

Thank you.

Mr. SWIFT. Could I amplify that point? Someone once said that unfortunately the first amendment rights belong more to the guy that owns the newspaper, or in your instance, the guy that owns the network.

Mr. CARTER. That was A. J. Liebling who said that in his book, "The Press."

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Mr. HOOKS. They have a right to lie on us, they have a right to call us pimps and prostitutes and whatever, and all the negative things, but they also have the freedom of speech to say something nice about us, and they don't, and we have no redress, and that is the unjust part of it.

We don't own the networks, we don't own the airwaves, so we can't come back at NBC if they say Mr. T is it. Then the world embraces Mr. T, and it is unfair to blacks and, of course, the other minorities that are portrayed negatively, unfair to them also, and that is where the first amendment doesn't stand with us, but against us.

Mr. SWIFT. Plus I don't know of any right that doesn't have a commensurate responsiblity, and that is the issue here. What are their responsibilities to go along with their first amendment rights that we would all defend.

Thank you.

Mr. WIRTH. Thank you all for being with us and the subcommittee will be adjourned.

[Whereupon, at 1:30 p.m., the subcommittee was adjourned.]

[The following statement was received for the record:]

THE CHAMBA ORGANIZATION, INC.

REMARKS BY ST.CLAIR BOURNE

My name is St.Clair Bourne and I am an independent producer/director based in New York City. I have been working in film and television for the last 15 years. I was a staff producer for the first national Black current events series BLACK JOURNAL during the years that program was nominated for and won the Emmy award. I've also produced programs for commercial television - the NBC WHITE PAPER SPECIAL REPORT series and the now-deceased CBS CABLE network. Moreover, the subjects of my films have not been restricted to Black subject matter. My latest film, for example, THE BLACK AND THE GREEN, deals with the troubles in Northern Ireland as seen by a group of civil rights activists on a fact-finding mission at the invitation of Irish nationalists.

What I'd like to do in the time alloted me on this panel is to extract what I think are important points from my experiences in media work and to apply them to the current situation. It seems to me that what is being discussed here is nothing less than the struggle for true democracy in this country. Let me explain - the BLACK JOURNAL series, the first Black news program broadcast over the national public television network back in 1968, did not come about due to the basic charity or a feeling of obligation to do the right thing by public television executives. Rather, it was the result of pressure placed on them by people in the streets who disrupted the normal flow of business and petitioned, in one form or another, some with bricks, others with pencils, for a share in the American process.

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It was significant that one of the first doors to open, so to speak, was media...which is the way the country perceives itself. BLACK JOURNAL and many other public affairs programs was the result of this movement. From this experience, two major lessons can be drawn: first, any change is the result of pressure and second, almost by necessity, the newest participant in the mainstream enters as an advocate and consequently, that new viewpoint is subject to resistance or deep examination under the buzzwords of "balance", "fairness" and "objectivity". This new viewpoint can continue to exist, grow and ultimately influence the mainstream only if there is a base. At that time, because of the political climate and the determination of the disenfranchised to participate in their own self-determination, a constituency existed for Black programming.

The first generation of Black programming, therefore, began with Blacks talking to Blacks about Black issues, first, through the BLACK JOURNAL series, second, through SOUL!- a public televison entertainment show that provided a forum for entertainers who had been virtually ignored by mainstream television and third, through an explosion of locally-produced public affairs programs aimed at the Black audience. These programs performed a necessary function but were in origin and in fact a reaction to the urban disorders during that time. They were a response to an admitted deficiency: addressing an audience which had never been adequately addressed directly before.

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If there was a flaw in this first effort, it was a narrowness of vison that could not be avoided at the time. By addressing, Blacks about Blacks only, for example, a large part of the viewing audience was excluded but more important, the role of operating within the total framework of America was not addressed.

The next step in Black programming was based on the premise that in the beginning it had been necessary to culturally affirm ourselves and this had been done. At the same time, other disenfranchised groups - hispanics, women, gays - began to model their movements after the style and techniques of the Black movement. Comedy and musical variety programs began to surface in mainstream television and movies that were oriented to Blacks which showed Blacks interracting with the wider areas of American life, although overall these programs relied on stereotypes and were cartoonish in style. The news/public affairs programs concentrated on social/political conflict and congress in America but concentrated largely on the cultural in the anthropological sense. In short, we still spoke to Blacks but about non-Black issues as well as Black issues.

The next step which should have had Blacks as participants in the American system talking about about any issue that affected that system never made it. The reasons why this step never made it was and is due to theresurgence of right-wing conservatism, the calculated attacks by the administrations to stop the advances people have struggled for and most important, the lack

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of Black participation in the decision-making process in most aspects of the economic and political process. Thus, the struggle for true democracy has been blocked. It was one thing to have an occassional Black-produced program addressed to a "special audience" air but there is continued resistence to an on-going presence from outside the mainstream contributing new elements that disturb the old world-view.

What to do? As I look back over my 15 years in media, it seems to me that the current way of doing business in America does not benefit most of the people in terms of communications. The entertainment products of both television and theatrical films, created under the system of capitalism, tend to divide the American people at the xpense of one group rather than unify; tend to streamline and distort the news rather than fully inform; tend to bore the audience rather than entertain and educate. One has only to look at the decreasing amount of people who look at television, the decreasing amount of people who participate in the electorial process, the poll that reported 63% of those polled believe that the current administration is holding back information about America's role in the Korean Airline incident to see that the pursuit of profit has made media into a negative force in society when, if properly used, it could be extremely positive.

The new technologies of cable tv, low power tv, computer networks, etc. will have no effect in making media more accessible

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unless the various communication companies are placed under the control of a government that is truly democratic and represents all the economic and cultural segments of the population. Thus, a policy of deregulation that allows a company to structure its services with the profit motive as the sole motive is, I believe, an undemocratic policy and one that should be opposed, particularly by those who, for historical reasons, are handicapped economically and politically.

Under capitalism, the various "set aside" plans, the 8A plans, the preferential treatment plans can affect some change in the very short run but in the not-too-long run, things will not change because a basic tenet of capitalism is that someone or some class must be deprived of basic goods and services. I propose nothing less that a change of ideplogy involving the redistribution of resources through a governing body composed and representative of the total citizenry that would guarantee the ability to communicate by sending and receiving information and yet would still allow for the individual entrepreneurial enterprise after basic needs are met. Whether this policy is called socialism or democracy is not important. What is important is that this redistribution policy be institutionalized through law so that no one class of people can deprive another class of people of basic rights...and in America, the right to communicate is one of these basic rights.

Thank you.

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MINORITY PARTICIPATION IN THE MEDIA

FRIDAY, SEPTEMBER 23, 1983

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
CONSUMER PROTECTION, AND FINANCE,
Washington, D.C.

The subcommittee met, pursuant to call, at 9 a.m., in room 2154, Rayburn House Office Building, the Hon. Timothy E. Wirth (chairman) presiding.

Mr. WIRTH. Good morning. Today the Subcommittee on Telecommunications, Consumer Protection, and Finance is meeting in a joint hearing with the congressional Black Caucus' communications braintrust.

Our hearing today will focus on the impact that the deregulation of the broadcast and cable industries may have on minorities. We will also explore key issues involving minorities in the media—namely, minority programing, portrayal of minorities in the media, minority ownership of media properties and equal employment opportunity within the communications industry.

I would like to welcome my colleagues here this morning and Mrs. Collins and I are delighted to see you all here, bright, shiny and bushy tailed, at such an early hour. Additionally, I would like to take a moment to thank Mrs. Collins for her continued leadership on this subcommittee and for her continued efforts to bring these very real and very critical issues to the attention of the members of this subcommittee and the audience in general.

I would also like to commend Mr. Leland for his enthusiastic work on this subcommittee in this area.

The subcommittee is currently in the process of devising legislation that would repeal the comparative renewal process—the key means today of assuring that minority groups will have the ability through license challenges to spur a broadcaster to improve or increase the amount of programing aimed at the needs and interests of the minority audience. The legislation being developed would replace this with a standard that quantifies broadcasters' public interest programing responsibilities.

The goal in devising this legislation is to ensure broadcaster responsiveness to the public, in terms of the performance by the broadcaster of his public trustee obligations, while giving greater certainty to the broadcast licensee. But any consensus broadcast legislation must deal with the critical issues which we will be discussing today.

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We are also in the process of crafting balanced legislation aimed at developing a uniform framework to better assure the development of the cable industry, while assuring that citizens have access to as wide as possible a diversity of program sources. Cable TV, like traditional broadcasting, has a responsibility to more fully encourage minority participation in the media.

Before going to our first witness, I would like to ask Mrs. Collins if she has an opening statement she might like to make?

[Mr. Wirth's prepared statement follows:]

STATEMENT OF TIMOTHY E. WIRTH

Good morning. Today the Subcommittee on Telecommunications, Consumer Protection and Finance is meeting in a joint hearing with the Congressional Black Caucus' communications braintrust. Our hearing today will focus on the impact that the deregulation of the broadcast and cable industries will have on minorities. We will also explore key issues involving minorities in the media—namely, minority programming, portrayal of minorities in the media, minority ownership of media properties and equal employment opportunity within the communications industry.

I would like to welcome my colleagues that are here this morning from the Congressional Black Caucus. Additionally, I would like to take a moment to thank Mrs. Collins for her continued leadership on this subcommittee and for her continued efforts to bring these very real and very critical issues to the attention of the members of this subcommittee. I would also like to commend Mr. Leland for his enthusiastic work on this subcommittee in this area.

The subcommittee is currently in the process of devising legislation that would repeal the comparative renewal process—the key means today of assuring that minority groups will have the ability through license challenges to spur a broadcaster to improve or increase the amount of programming aimed at the needs and interests of the minority audience. The legislation being developed would replace this with a standard that quantifies broadcasters' programming responsibilities. The goal in devising this legislation is to ensure broadcaster responsiveness to the public, in terms of the performance by the broadcaster of his public trustee obligations, while giving greater certainty to the broadcast licensee. But, any consensus broadcast legislation must deal with the critical issues which we will be discussing today.

We are also in the process of crafting balanced legislation aimed at developing a uniform framework to better assure the development of the cable industry, while assuring that citizens have access to as wide as possible a diversity of program sources. Cable TV, like traditional broadcasting, has a responsibility to more fully encourage minority participation in the media.

The subcommittee has consistently maintained the goal of information diversity. This basic first amendment principle is fundamental to the free exchange of ideas that characterizes our free and democratic society. Our promotion of this principle must include the assurance that our Nation's diverse populace—particularly our minority populations—receive satisfactory levels of programming directed toward their needs and interests. This goal must be met through increasing the levels of minority ownership, employment, and programming in the electronic media marketplace.

Television, radio and cable television have the unique ability to bring America together through the presentation of diverse ideas and thoughts. But, this great potential cannot be realized if there is no programming, or only a minimal amount of programming, that is specifically directed toward the needs and interests of our minority communities. Moreover, diversity through programming on one side of the camera can hardly be achieved without a corresponding representation on the other side. While the nexus between minority ownership and employment on the one hand, and more programming responsive to the needs of minorities on the other, has been repeatedly recognized by both the courts and the FCC, the statistics regarding minority ownership and employment in this country are appalling.

Our witnesses today will focus on these very real and very critical issues. I look forward to their testimony. Again, I commend the gentlewoman from Illinois for her tremendous efforts in these areas. Before we proceed, do any members have opening statements they would like to make?

Mrs. COLLINS. Yes. First, let me thank you for holding this hearing jointly with the Congressional Black Caucus. I think this dem-

onstrates your commitment to promoting minority participation in the telecommunications industry, and it shows again how strongly you have helped us by working to foster greater diversity in the media marketplace.

For those who are attending as interested observers, let me join in welcoming you to the first joint hearing with the communications braintrust, which I chair, and Mickey Leland vice chairs and the subcommittee chairman of telecommunications, of which both Mickey and I are members.

To the witnesses, many of whom took time out from your very important schedules to appear here, I extend a very special welcome and thank you for coming.

As many of you present today are aware, the subcommittee is considering broadcast deregulation which eliminates the most significant tool available to the public, as a whole and the minority community in particular, the comparative renewal process. This process, serves to assure that minorities and others will have the ability through license challenges to encourage a broadcaster to improve or increase the amount of programing aimed at the needs and interests of the minority audience.

With the glaring lack of new frequencies available and the tremendous cost of constructing a broadcast facility—if a frequency can be found—minorities stand to lose much in the way of owning existing stations in major markets if the comparative renewal process is repealed.

On the cable scene, as many of you may know, the Senate has passed and sent to the House legislation whose purpose is to eliminate Government regulations in order to prevent the imposition of unnecessary economic burden on cable systems and their provision of service to the public. With the increase of black elected officials on the State level, it is highly conceivable that the growing number of black mayors in our Nation may be left without the power to insure that cable television franchises truly meet the needs of their own citizens and institutions.

While we are speaking about cable, let me say that Tom Wheeler, president of National Cable Television Association—has been giving very serious consideration to the need for very strong EEO language in cable legislation. Such language would be a first step in the process of assuring that minorities have an equal opportunity to fully participate in the cable process.

But in the midst of the ongoing direct discussion, which, in the words of Chairman Dingell, "confer the exclusive and highly profitable use of a scarce and valuable resource in perpetuity, without any accountability of the way to measure broadcasters' performance, we are steadily losing ground." That is the basic purpose for our hearing today.

With that, Mr. Chairman, I ask unanimous consent to place the remainder of my remarks in the record at this point.

Mr. WIRTH. Without objection, so ordered.

[The statement of Mrs. Collins follows:]

STATEMENT OF CARDISS COLLINS

Good morning. Let me begin by thanking Chairman Wirth for holding this hearing, demonstrating his commitment to promoting minority participation in the tele-

communications industry and working to foster greater diversity in the media marketplace.

For those of you attending as interested observers, let me join in welcoming you to the first joint hearing with the communications braintrust which I chair and the Subcommittee on Telecommunications, which I am a member of. To the witnesses, many of whom took time out from very busy schedules to appear today, I extend a very special welcome and thank you for agreeing to testify on how deregulation of the telecommunications industry will or will not help minorities.

As many of you present today are aware, the subcommittee is considering broadcast deregulation legislation which eliminates the most significant tool available to the public as a whole and the minority community in particular—the comparative renewal process. A process which assures that minorities and others will have the ability through license challenges to "encourage" a broadcaster to improve or increase the amount of programming aimed at the needs and interests of the minority audience.

With the glaring lack of new frequency's available and the tremendous cost of constructing a broadcast facility, (if, a frequency can be found!) minorities stand to lose much in the way of owning existing stations in major markets if the comparative renewal avenue is repealed.

Interestingly enough the move to repeal this process comes at a time when minority companies are challenging the renewal of licenses to 13 RKO broadcast stations. Imagine what would happen if repeal of this process becomes law before these challenges are completed!

On the cable scene, the Senate has passed and sent to the House legislation whose purpose is to eliminate Government regulation in order to prevent the imposition of an unnecessary economic burden on cable systems in their provision of service to the public. With the increase of black elected officials on the State level, it is highly conceivable that the growing number of black mayors in our Nation may be left without the power to insure that cable television franchises truly meet the needs of their own citizens and institutions.

In the midst of on going deregulatory discussions which, in the words of Chairman Dingell, "confer the exclusive and highly profitable use of a scarce and valuable resource in perpetuity without any accountability" or way to measure a broadcaster's performance, we are steadily losing ground. Currently minorities own less than 140 stations out of a total of approximately 10,000 stations in the U.S. Out of some 5,000 cable systems, less than 40 are minority owned franchise systems. In employment, minorities are virtually non-existent in decision making positions, and, while you may see quite a few of our faces reading the news, you will be hard pressed to find minorities deciding what is news and whether it should be aired. Adding insult to injury, is the shameful portrayal of minorities in TV programming and films. The only thing worse than shoddy programming is the total lack of our presence in all too many shows and films. Contrary to popular belief, minorities do not need "specially carved out roles."

Make no mistake, if we do not take action to correct the deliberate and systematic invisibility of minorities in the media, we will not play a meaningful role in the way American society receives information about itself and the world. We will continue to lose footage in the economic mainstream of society due to our inability to gain better jobs in new technologies and face the prospect of not being able to shed the label—underrepresented and underserved!

Thank you.

Mr. WIRTH. Mr. Moorhead.

Mr. MOORHEAD. Well, Mr. Chairman, I just wish to congratulate you and Cardiss Collins for having this hearing this morning on very serious problems that relate to minority rates in radio and television and on cable, and I think it is our responsibility to look into them and to examine them and to see what can be done to protect them.

Mr. LELAND. Thank you, Mr. Chairman.

Let me remind the folks who are here today that this indeed is an official hearing and I want to thank my colleague in the congresssional Black Caucus, Cardiss Collins, for having the foresight and the vision to ask the chairman to put this kind of hearing together during the congressional Black Caucus weekend. It is sub-

stantial and and it is credible and I am so proud to be a part of it, and I am, of course, more than proud to be a member of the Telecommunications Subcommittee, which Tim Wirth chairs, who has done so much to forward our cause by accepting the wisdom of both Cardiss and me in terms of trying to further the cause of blacks and other ethnic minorities in the media.

Thank you, Mr. Chairman, for giving me this opportunity.

Earlier this week, the subcommittee held a hearing to discuss the problems of minority oriented programing and the portrayal of minorities in the media. I am very happy that today we will discuss the serious problems confronting minorities with regard to employment in the industry and ownership of telecommunications properties.

Over the next few months, the Telecommunications Subcommittee will be reviewing various legislative proposals concerning deregulation of the broadcast and cable industries. The centerpiece of most broadcast deregulation proposals is the repeal of the comparative renewal process and other structural safeguards aimed at insuring broadcaster accountability to the public.

As we proceed in discussing deregulation legislation, my priority is to insure that minority concerns are adequately addressed. It is imperative that, to the extent we provide for license certainty for broadcast licenses, we do not exclude the possibility of greater minority participation as owners in the industry. For that reason, I firmly believe that any new licenses created by the FCC through dropins in radio or television or by revocations or denials of existing licensees should, to the maximum extent possible, be made available to qualified minority applicants. This could be accomplished either by setting aside a certain percentage of new licenses for minority applicants, or by creating a minority preference, as the Congress established for low power television. Of course, the Chairman of the FCC is against preferential treatment of minorities.

Whatever means we use, the essential point is that minority ownership is at an abysmally low level and must increase if the industry is to live up to its promise of service to the entire community. Most of you are all aware of how dismal the minority ownership statistics are, but they bear repeating: Minorities own only 171 point of more than 10,000 radio and television stations in the United States. That is less than 2 percent of existing broadcasting licenses. Congress has a clear mandate, in my opinion, to do something about that abysmal situation.

Earlier this year, I introduced, along with my good friend, Congressman Charles Rangel of New York, and with the welcome support of Chairman Wirth, Congresswoman Collins and six other members of the Telecommunications Subcommittee, legislation to extend and codify the tax exemption procedures recommended by an FCC advisory committee to facilitate greater minority ownership of broadcast and nonbroadcast properties. This legislation, H.R. 2331, would amend the Internal Revenue Code to raise to a maximum of $500,000 the investment credit which can be claimed against tax liability for the purchase of a qualified used telecommunications property. The purchase of an existing telecommunications property by a minority owned or controlled business, either

directly or through a limited partnership, would qualify for the higher investment tax credit.

Our legislation would also allow tax certificates, now granted by the FCC to sellers of broadcast properties when the sale involves minority purchasers, to be issued for sale to minorities of nonbroadcast properties such as specialized mobile radio systems, multipoint distribution systems, cellular radio and other private land, mobile, and common carrier systems.

This legislation has been endorsed by the National Association of Broadcasters, the National Cable Television Association, and other industry and community organizations. I am optimistic about its prospects for adoption in this Congress, thanks to the leadership of my good chairman, Mr. Wirth.

It also is my intention to insure that any broadcast deregulation legislation that comes out of the House of Representatives includes strong language concerning equal employment opportunities and affirmative action. At the present time the broadcasting industry has a very poor record with regard to employment of minorities and women. If the industry is to be deregulated, there must be assurances that the current employment situation will be remedied. Again, the leadership of the chairman of this committee, has offered us some great wisdom and great direction. Thank you, Mr. Wirth, for that.

Most minorities in the industry today received their early training in the industry at nonminority owned stations. I would like to insure that present day minority youth have the same or an enhanced opportunity to learn the industry. Moreover, they should have the opportunity to participate in decisionmaking and managerial positions within the industry. As we know all too well, without some sort of spur from the government, nonminority broadcasters are not likely to provide our young people significant opportunity in the industry.

With regard to employment opportunities for minorities and women in the cable industry, I am very pleased to note the leadership on this issue demonstrated by the National Cable Television Association, through its president, Tom Wheeler. Early this summer, Tom came to me, Chairman Wirth and Congresswoman Collins and stated that the cable industry was interested in addressing, in any forthcoming cable deregulation legislation, the issue of employment of women and minorities. In the intervening weeks, there have been a series of discussions between the NCTA and subcommittee members and staff geared toward the inclusion of EEO language in any forthcoming bill. While it is by no means clear when, or even if, this issue will be resolved, I would like to commend the NCTA and Tom Wheeler for initiating discussion of this issue.

I particularly would like to note the contrast between the approach taken by the NCTA, which initiated discussion of inclusion of EEO language in deregulation, legislation, and the approach of other telecommunications industry groups which have vigorously opposed efforts to increase the level of participation of women and minorities within their industries, particularly attempts to include EEO language in deregulation legislation.

As many of you are aware, yesterday the Federal Communications Commission instituted a rulemaking to consider repeal of the multiple ownership of 7-7-7 rules, which prohibit a broadcasting entity from owning more than seven television stations and seven AM stations and seven FM stations. These rules are in place to encourage media diversity and to reduce concentration of ownership. I believe it is premature to consider repeal of the multiple ownership rules.

Broadcast deregulation legislation will, for all intents and purposes, provide broadcasters with licenses in perpetuity. It seems unconscionable that, as we consider such legislation, we also should increase media concentration. Until there is true diversity of ownership and of viewpoint in the broadcasting industry, I do not believe we should abolish rules which are geared to promoting such diversity. Early next week, Cardiss Collins and I will introduce legislation to block the FCC from repealing those rules.

I am very, very sorry that I cannot remain here for the entire hearing, Mr. Chairman. I am chairman of the Congressional Black Caucus Energy Braintrust, which convenes in a few minutes. Before I leave, however, I would like to thank Chairman Wirth and Congresswoman Collins for their leadership on the issue of increasing minority participation in the media. I would also like to thank all of the braintrust participants for taking time out of their schedules to share their perspectives with us. I look forward to working with all of you, and I thank, too, the members of our subcommittee who are here participating, and I think that it unfolds an incredible scenario on behalf of both the leadership of Congresswoman Collins and our chairman of our committee, Chairman Wirth.

Thank you, Mr. Chairman.

Mr. WIRTH. Thank you, Mr. Leland.

Mr. Bates.

Mr. BATES. Thank you, Mr. Chairman.

I would like to thank Chairman Wirth for the hearing and also Congresswoman Collins for organizing this, participation also of the Congressman Leland's effort, and also my colleague from California, Congressman Moorhead, for being here today and showing interest in this important issue.

I think there are three issues that need to be addressed before we even bring up the subject of deregulation, and that is the unconscionable amount of violence on television, the lack of adequate children's programing, and the most important issue that we are addressing here today is it would apply inadequate participation of minorities in both programing and direction, acting and the contents of the programs themselves.

I think the Congress itself has not set a good example in equal opportunity both in staffing committees as well as individual Congressmen. I think that I, for one, being very impatient as a freshman—I have only been here 8 months—I think the record is a poor one and in all areas it needs improvement. For too little, too long, we have had promises, we have had hearings—it goes on and on—and I think the time now has come for economic boycotts, for strong legislation to stop funding these programs, to not even consider the kind of legislation that has been moving through Con-

gress that has been benefiting and protecting many of these industries, until we see some real improvement.

So it is a pleasure for me to be here today.

Mr. WIRTH. One of the most important issues that we are examining today and will be examining in the coming weeks is the potential that television has to be a teacher, the understanding from watching television directly and indirectly.

Congressman Leland was recently in Africa and the other day told me a story about the impact of American television on young Africans. I was wondering if I might—Mr. Leland, would you give us a picture of how Dallas plays there.

Mr. LELAND. Thank you very much.

I have watched Dallas—I am sure a lot of you have—I happen to be from Texas. I am not from Dallas, I am a world apart from Dallas, I am from Houston, but if you watch the TV series Dallas, you will know that you have never seen a black face on Dallas, you have never seen a Hispanic face on Dallas. It is interesting, because you know, we sometimes think in parochial terms and we think that the networks and the producers get away with promoting this kind of inequity only in America.

But let me tell you Dallas is watched all over the world. It is watched in the Middle East. It is watched in Africa. It is watched in Asia. It is watched everywhere. It is distributed literally all over the world.

I just came back from a 3-week tour of Africa. I was in Zaire, Zambia, Ethiopia, the Ivory Coast, Morocco, Algeria, and when I was in Zimbabwe, Dallas was a very prominent show there. As a matter of fact, the most popular. I wear a cowboy hat and some kids started yelling at me, "J.R., J.R."

It is rather interesting to find out that in talking with some of the people in Africa, they asked me where I was from. I said I was from Texas.

"You can't be from Texas."

"Why can't I be from Texas?"

"Because there are no black people in Texas. J.R. is from Dallas. We watch Dallas all the time and we see no black people in Dallas."

The obvious conclusion is that indeed that we are perpetrating a great inequity and a great disservice to the ethnic minority community of our country when in fact we export the kinds of service and films and that kind of thing to countries like Africa, where there are no black people seen present in those movies.

I appreciate the opportunity to tell that story, Mr. Chairman.

Mr. WIRTH. I just want to bring out the extra impact that this media has on the education of people and your experience in August. Imagine what happens to young people in this country and the kinds of things that they are learning directly and indirectly and the kind of obligation therefore.

You pointed out, and Mrs. Collins pointed out the obligation that comes with the privilege of broadcasting to the American public and to the citizens of the world.

Mr. LELAND. If you will yield, I don't know the ages of your children—I know you have children—but as they watch television and they see only a Mr. T. of the A Team or George Jefferson and Gary

Coleman, what do your kids think about as they grow up to be adults about black people, and what it is they have to offer? On the other hand, what do young black or Hispanic kids think when they see an absence of serious and dramatic roles played by blacks and Hispanics and Asian Americans when they grow up? What kind of role models do they see on television?

Mr. WIRTH. That is the whole impact and perhaps the indirect side of what kids are picking up, and what do kids get when they come home from school in the afternoon.

Mr. LELAND. It could be a very very strong source of the origin of racism in America in 1983.

Mr. WIRTH. Our first witness this morning is Mr. Arnoldo Torres, the national executive director of the League of United Latin American Citizens, headquartered in Washington.

Again, thank you for being with the subcommittee, and you are familiar with the rules of the subcommittee in which all statements will be included in full in the record, and we would ask you to summarize and then we will move to an exchange with the members of the subcommittee.

STATEMENT OF ARNOLDO TORRES, NATIONAL EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Mr. TORRES. Mr. Chairman, I very much appreciate the opportunity to come before you today.

For the record, my name is Arnoldo S. Torres and I am the national executive director of the League of United Latin American Citizens (LULAC), this country's oldest and largest Hispanic organization with over 110,000 members in 43 States. On behalf of the league, I very much appreciate the opportunity to come before you today to express our views on legislation dealing with the creation of avenues of accessability for minorities in the telecommunications industry.

The Hispanic community's presence in the Americas dates back to approximately five centuries. During this time Hispanics have contributed culturally, economically, politically, and militarily to our country's growth. In the Southwest and Florida the cultural influence dominates, as evidenced by the food, architecture, and the names of States and cities in these areas. In fact, the oldest city in the United States is a Spanish city, St. Augustine, Fla.

With the purchasing power exceeding $50 billion and tax contributions in the hundreds of billions, Hispanics have contributed significantly to the Nation's financial growth. With over a third of our population under the age of 25, Hispanics provide a solid economic base for future financial growth. Politically, Hispanics have always strongly associated ourselves with the democratic system and the fruits of the association are only now being recognized and felt. Militarily, Hispanics have more than done our share of dying and defending this country's honor, values, and image.

However, despite these contributions, despite these sacrifices, and despite the growing potential of our future influence, the country's media industry, be it electronic, print, or cable, have painted a picture of Hispanics as being whores, criminals—yesterday if you watched prime time television, from 6 to 7 o'clock to 11, you would

have seen one Hispanic on all the programs, and he was a drug addict on "Hill Street Blues" who wasn't able to go straight. That is the only Hispanic you would have seen on prime time television on Thursday. It is a big night on television, as most people will tell you.

The "Cisco Kid" is the greatest example of Hispanic being imbeciles. Another good example is "Fort Apache", the movie that was made in New York, about the Puerto Rican community. The only Hispanic in that movie was a Puerto Rican nurse and she happened to be a junky, a drug addict.

"Condo", a very interesting program portrays Hispanics as imbeciles, to some extent as social misfits.

The commercials of the old days, the Frito Bandito commercials, and all of these things have always been done in the name of artistic license, always in the name of artistic license.

The negative portrayal of Hispanics in telecommunications programing is a reflection of the employment practices within the industry. A review of the statistics bears this out:

Hispanics represent 6 percent of the total work force in the cable industry—268 out of 52,464. Hispanics represent 7 percent of the total work force in the broadcast industry.

Not 1 percent of those people in these work forces of Hispanic background are in decisionmaking positions.

A breakdown of the three major networks reveals that Hispanics are grossly underrepresented.

ABC: As of 1980, only 3 percent of ABC's personnel at its headquarters in New York, Los Angeles, and Washington, D.C. were Hispanic.

CBS: Less than 3 percent of its nonclerical employees as of 1980 were Hispanic at its headquarters in New York, Los Angeles, and Washington, D.C.

NBC: Only 3 percent of NBC's nonclerical employees as of 1980 were Hispanic at its headquarters in New York, Los Angeles, and Washington, D.C.

The impact of these exclusionary policies is clearly observable in terms of network programing. NBC is the only network that has one vice president; he is in charge of public affairs.

We provided at the hearing in our testimony on Monday, some examples of the number of Hispanics that are in some of the network programs. "Hill Street Blues" is one that is very positive to some extent, but yet the character is one which has never been allowed to blossom. It is simply a nice guy who is very good at doing administrative gofering work, very little challenging work at that. The other members on "Hill Street Blues" make up 44 percent of the number of Hispanics on television. They are drug addicts and gang members.

Much of these inequities could be alleviated by Hispanic ownership but even there Hispanics are grossly underrepresented. For example:

Out of 536 VHF television stations Hispanics own two, or less than 1 percent;

Out of 321 UHF television stations Hispanics own three, or 1 percent;

Out of 5,794 cable owned companies Hispanics own five, or less than 1 percent;

Out of 4,723 AM radio stations nationally Hispanics own 30, or less than 1 percent;

Out of 3,458 FM radio stations nationally Hispanics own 11, or less than 1 percent.

Presently, Hispanics have the Spanish language media which constitutes the majority of the Hispanic ownership within the industry. This medium provides an opportunity for Hispanics to express our diverse opinions, cultures and issues that we do not receive from the non-Hispanic media.

It is important that you understand the only reason the Spanish speaking media ever developed in this country was because the existing status quo of the media was very, very ineffective, very, very ignorant, and very, very insensitive, racially prejudiced about trying to incorporate and address the interests of the Hispanic community.

As a consequence, the radio and the television stations have missed a great deal of the market in the Spanish community. Yet bolstering and expanding this alternative media should not be viewed as a cure for all or by all Hispanics. Just as the telecommunications industry provides images of whites reflective of their status in society, they must provide the same for Hispanic and other minorities.

The increase of employment opportunities would translate into a rise in the level of programing direct toward the Hispanic audience and to the majority audience about Hispanics. Ownership also provides for an increase in sensitive programing but also allows Hispanics to have decisionmaking power over what is and isn't aired.

While our concerns are very similar to those expressed by blacks and other minorities, our issues and concerns are very distinct due to our language, culture, and diversity. Therefore, we recommend:

That a commission be developed, a portion of its membership being from the proposed advisory committee, to analyze the manner in which Spanish language media addresses Hispanic concerns. Recommendations on how to incorporate these recommendations in their programing. This would occur simultaneously with efforts to increase Hispanic ownership and employment opportunities within the industry. This should be a treatment of emphasis put on the small business programs for minority production companies.

This is something that is very, very important to try to start our own programing. As we called upon on Monday, a thorough investigation of the industry and its discriminatory practices of persons on and off camera, that the subcommittee also consider the role of the FCC in dealing with any minority accessability to the media industry.

It is very interesting, Mrs. Chairperson, the push for the set-aside idea, and I guess it is very, very reluctantly that we would agree with the set-aside. However, in all candor we have problems with this idea that Government is always going to solve all of the problems. We would very much like to see the Federal Government file a lawsuit against the industry. We would like to see the Federal Government take the industry to court for its blatant historical,

discriminatory, racially prejudiced attitude toward minorities in this country.

The idea of tax incentives are simply granting people the opportunity, a benefit, for something that they have done wrong for all of these years and decades. Now some have indicated if the Government gets too involved that there is concern for the violation of the first amendment. Where was concern for the first amendment in its accuracy and insuring that it was not being abused by the industry? There has never been a discussion about that abuse, but the media has always turned around and said that we have an artistic license.

Does the media have the right through artistic license to portray Hispanics as criminals, as junkies, as idiots? Does the media have the right to continue to neglect the correct and more accurate portrayal of our people on television or for that matter, simply to portray us on television in one role or another?

It is important to also understand, and we want to make it very clear for the record and for those few members of the subcommittee that are here, that this organization—and I don't believe any Hispanic organization is calling for a quota, is asking for a slew of programing just for and by Hispanics. All we are asking for is that we not be portrayed as fools and idiots and negative elements in this society.

We recognize that we have our criminals, we recognize that we have our drug addicts, we recognize that we have our social misfits, but then what group in America or in this world doesn't? The problem is that the media wants to always portray us in this manner.

I think that that is simply a very reasonable, fair request that we make and again, I don't believe that all of the Government involvement in this arena is really going to make the media respond. In our opinion, the only thing that will actually make them do it is either by economic boycotts by the black and Hispanics and even children's organizations, as well as removing the tax incentives that they have, and at the same time, making sure that the Federal Government recognizes very clearly it must not allow an institution as powerful as the media to be above the law and not be cited for discriminating against minorities in this country.

I very much appreciate the opportunity on behalf of our organization to come before you. I hope that we will have a chance to elaborate in more detail our experiences with the media during the questions and answers. Now, I turn it over to my distinguished colleague in the black community, Mr. Jackson, unless there are questions.

Mrs. COLLINS [presiding]. Let me point out that I am sorry that the chairman had to leave. He had an emergency in his family. He wanted to, of course, be able to stay here. Each member of the committee or subcommittee who is here, all of us have dual responsibilities and sometimes even more than that, triple and quadruple responsibilities. Both Congressman Moorhead and Congressman Bates have to be leaving also in a very short period of time. I think it is significant all of them are here today to show you how important they all think this meeting is.

Our next witness, of course, comes here with a great deal of distinction. I think that it might not be the worst thing if I add that it

is the first time we have had a possible Presidential candidate to come before this subcommittee, and I welcome you, Rev. Jesse Jackson. You may present your testimony at this time.

STATEMENT OF REV. JESSE JACKSON, PRESIDENT, OPERATION PUSH

Reverend JACKSON. Thank you very much.

To the distinguished presiding officer and those of you who are present, I am delighted to have Congresswoman Cardiss Collins and other distinguished members of the hearing, those of you who are present. This is a very critical hearing and platform we are presenting today. It is important for the Nation to free itself of negative views of minorities, to lock out the minds and the moneys of blacks, Hispanics, women, other rejected minorities. It is significant to note as we project stereotypes through the media, that no black has ever been convicted of treason against this country; that we are more likely to be military heroes which is never projected. The first to die in the war to free this nation from colonialism.

We have fought in the war at home and abroad, and with our young men in the military in Germany now, on the one hand victims of resentment there because of the growing anti-American feelings, as well as because they are black and Hispanic—so there is resistance from without. And then they are on the bottom within their own military arrangement, and in the face of the double resentment, and resistance, they still serve.

That predicament, that dilemma, is the opposite of the happy soldier, or the junky soldier. It is a soldier fighting for home without a home, soldiers abroad fighting to protect the rights of people, with no assurances of those same rights being protected at home; soldiers in the European theater fighting to assure that Europeans would have the right to vote before they had the right to vote at home.

It is fighting that dilemma, being an unwanted American everyday. It is the dilemma of the bird with the obligation to fly but who is put in a cage and robbed of his bird integrity. That is the serious dilemma that has characterized the lives of blacks and Hispanics every day in that military arrangement.

Of course, just the opposite is projected in the media. Thus, the majority community is robbed of adequate appreciation of what his role really is. To be sure, we have had a standing Army for 40 years to protect democracy and can't get Federal registers in Mississippi to end dual registration. That is life on the serious and the real side.

The media attacks us rather aggressively every day with double standards. We are projected as less intelligent than we are. The fact of the matter is I am glad that Mr. Bluford made the space mission, and I am glad Sally had a chance to ride, but the fact is that blacks from Tuskegee are flying airplanes with bullets being shot at them in serious defense of this Nation. And so it is that we have had blacks in training to be astronauts ever since the planes have been flying, but we are not projected as being physicists and judges and journalists and thinkers and doctors and philosophers

and theologians, so we are projected every day as being less intelligent than we are.

The rule is that the broader community learns to do without a valuable national resource. It lives within us ultimately as an inferior complex within the majority community as a superior complex. It robs us of a basis in truth. We are projected as less intelligent than we are; less hard working than we are; less universal than we are, and more violent than we are. These basic projections take place every day. Day and night. The myth projected about us is not the people who make cotton, cane or who hued Tobacco Road or who went north to work in steel mills and the auto industry, we are projected as less hard working than we are.

It is significant that when one sees the Joe Lewis story that there are blacks emerging not as docile but as national heroes, and nobody has to save our national ego against Germany and the Arian superiority in Max Schmeling. It was our fear. It was RAM who negotiated the arrangement for modern Israel. It was Jessie Owens winning the Olympics in Berlin in 1936. It was Charles Drew who developed blood plasma which saved literally millions. Daniel Williams in performance of open heart surgery.

So it is that the media has been by and large unfair to us by distorting news and deleting news and in many instances projecting the opposite of reality in terms of negative mythology. It is significant that Mr. Blueford successfully was on the space mission and Vanessa is now Ms. America, but then there is this resistance to reporting our intelligence and our useful concern because what was significant about the space mission was someone operating in what they call "crossover", or in the general market; or Vanessa having a title in the general market, because we are not given access to general market when we are projected on matters like foreign policy, even our Congresspersons are dismissed as less than competent.

Somehow foreign policy is not in our domain. The media contributes to limiting us to a certain domain. The fact is slavery was a foreign policy. We have been involved in it ever since. There is no offense to us being in Germany as soldiers and perhaps as doormats but not as diplomats. The media over and over again projects us in this inferior posture.

I would say lastly that to Hispanics and blacks historically, deregulation represents nonprotection. When the public accommodations was deregulationed we had to go to the back of the movie and couldn't use hotels, motels, parks, libraries. It was not until it was regulated that public accommodations was afforded us.

As long as the voting rights was States' rights and deregulated we didn't have the right to vote though we had the obligation to pay taxes.

So long as the marketplace in terms of jobs was deregulated we were victims of negative action, never affirmative action. As long as schools were deregulated we were locked out. Only when we were able to get the National Guard in to stand there were we able to go from the disgrace of being locked out to the roles we now play.

I suggest in the communications industry as well, we need to face the fact that so much of the misery that is being heaped upon

the American public every day and night is because of the consistent systematic desecration of our worth, of our value and there are several remedies.

First, this hearing is a kind of remedy because it begins to expose it in the broader public.

Second, court suits are remedies, they are much more expensive for those who are locked out.

Selected boycotts are remedies. More competition as well as tax incentives, those who in fact do not employ as executives and professionals in significant positions must be challenged in fact by law.

Thank you very much.

Mrs. COLLINS. Thank you, Reverend Jackson.

Because I know that again members have to leave I am going to yield at this time to Mr. Moorhead of California.

Mr. MOORHEAD. Thank you, Madam Chairman.

Mrs. COLLINS. We will be working under the 5-minute rule, incidentally.

Mr. MOORHEAD. Thank you very much, Madam Chairman.

I think on my part and on the part of many others you have pointed out some things we don't always think about. When you do consider it there is an overemphasis on the negative side many times. I think it is a very, very serious problem, the point of view not only of the minority but the majority because it is important that we get the proper understanding of all the people in our country.

I know those of us who have served with Cardiss Collins and Barbara Jordan know very well that there is no inferiority in ability because with Cardiss, Barbara, and others you had to have your facts and you had to be on sound ground or else you came out second best. The capability is certainly overwhelmingly there looking for opportunity and exposure.

I know coming from southern California the tremendous contribution that the Mexican Americans, Cubans, and many other people of Latin or Asian have made in our area. I know that we do have Mexican-American stations in Los Angeles that have done an outstanding job of what they do for the public and they do an outstanding job in bringing all community issues to the people.

I have had the opportunity to appear before elections on those stations and in debates with the opposition. I know how helpful and meaningful those things can be.

So I want to thank you both for being here this morning and for bringing the insights that you have to us.

Reverend JACKSON. Congresswoman Collins, I think we want to emphasize the fact that we really believe in a free press but we also want a fair press, and lack of fairness undercuts freedom. In a sense what we have allowed to happen in the licensing process, we allowed the monopoly to develop and really in effect we have three networks where the name is different but the game is the same. That is why there is such similarity in their perspectives and such cross-breeding in those that in fact manage and control the news, manage and control the news.

The very questions that they lay out as the predicate pre-determine the answers. We have done several observations during this period of exploration about the possibility of running for President.

We have noticed a couple very basic lines of thought. We were on a program one morning in Detroit and the question was asked on screen, would you support a black for President?

Sixty percent of the people said no and 40 said yes.

As the program went on it went up being 65 percent saying yes and 35 percent saying no. Once they were able to be freed of the ethnic predicate and began to talk about ways to stop plants from closing, began to talk about corporations that take our tax dollars, take our consumers' dollars and take our jobs to slave labor markets abroad, the people were able to operate in a universe of ideas and they were not locked into an ethnic hold that the media literally put them in.

If one asked a question should a woman be President, ask that question, people again began to think of the weak ways in which women have been projected. You may conclude, well, maybe no, and if so, not yet. You could ask the same question saying, are American women as intelligent as and as capable as Indian women or British women? The answer would be yes.

Well, if that is the case, if Mrs. Ghandi can run India and Mrs. Thatcher can run Britain, a woman can run this country.

The way the question is set determines what the answer will be. And the media is in control of setting the answer in the question. If one asks should a handicapped person be President and you start thinking about all that which a President must do, you know some ride horses, others carry their own bags and run peanut farms and all these great strong things that American hero Presidents and war generals must do, and surely a person who is handicapped couldn't do that. The reality is, Franklin D. Roosevelt was in a wheelchair and was elected four times because he was not limited and circumscribed by the original question which set the predicate.

So the media every day sets negative predicates that predetermine answers that undercut our ability to function in general society.

Mr. MOORHEAD. I think along that same line, prior to the last election in California they asked a group of questions about how many would support various minorities for Governor, and I believe 5 percent said they would not vote for a black, and of those two of the five were voting for Mayor Bradley of Los Angeles. They asked those how many would not vote for an Armenian and there were about 9 or 10 percent that wouldn't vote for an Armenian but virtually a majority of those were voting for George Dukmejian.

People don't really relate to individuals when they relate to one group or another. I think they judge groups on a different standard than they do individuals. It is too bad that they judge it in groups at all. They should judge each individual human being as an individual human being rather than as a part of any particular group or organization.

Mr. TORRES. I think a large reason that happens is the exact point the Reverend just made, the media has portrayed minorities in a specific light. Those they have not portrayed at all simply have not had the opportunity to portray themselves or have themselves portrayed in a positive light or in a much more truly reflective light.

I think that is the unbelievable power that the media has been able to establish in the country. It is a tremendous power that has really every year almost become even more insulated.

I think that the point of deregulation is something that really has to be seriously looked at but it should not rest simply on the issue of the syndication rule. There must be a total revamping of the media industry in this country and perhaps in some cases we should throw out this idea that has really been abused of artistic license. It has been abused by the media. It has been abused knowingly—a very high standard under legal terms—but a very clear fact, to misportray minorities negatively and women and other people in this country.

I think that the damage that the media has done is one that all the country suffers from and one that perhaps we will never be able to solve but clearly it does require a tremendous aggressive front by this Congress and by society in general. Especially minorities.

Mr. MOORHEAD. You bring out a point there that many of us have been concerned with that if we turn the syndication over to the networks—as there is an attempt to do at the present time—the opportunity for originality and for bringing in minority groups and all kinds of people, that the networks have shied away from for so long, will be lost. Most of the programing that has come out of that nature has been coming out of an independent effort that individuals have come up with and they have been able to sell them eventually to the networks.

But if the networks had had control to begin with we may never have gotten them. There have been some tremendous programing that has involved the minority community of that type. We are concerned that if we make a change in that direction it will not be to the good.

Reverend JACKSON. In a democracy perhaps our greatest protection is the check and balance, through the executive, judicial, and legislative.

In the media's concentrated power, Congresswoman Collins, there is no check and balance. Thus it is the monopoly that is antithetical to democracy and those who are not inside that family are the victims of the abuse.

Mrs. COLLINS. The time of the gentleman has expired.

Mr. Bates.

Mr. BATES. Thank you.

I appreciate the statements of both of you and I want to say first that I have another hearing at this time in the Subcommittee on Oversight and Investigation but I am not going to it. I am staying here because I think this issue is more important.

I am glad that you are here but I guess I am very negative or not very positive about the prospects of legislation through this Congress in these areas. This is a Congress whose own staff does not practice affirmative action. The subcommittee staff and the powerful large committee staffs in this Congress do not have any affirmative action program. So we are asking this same group of people to pass legislation that is desperately needed.

I am very apprehensive that that will occur. I think the media have this tremendous power, and the power they really have they

will have whether we pass legislation to try and deal with the area of minority participation or not.

Now the other power that the people have is the economic boycott. I am interested in going around the legislative process and really moving toward the dollars because it seems like everything on the Hill that I have come in contact with revolves around the dollars.

What are the prospects of an effective economic boycott that can make them change if it is not in their heart to change? That is the question I would be interested in.

Mr. TORRES. To begin with, I want to compliment you, Congressman Bates, on the comment you made about the Hill. I cannot tell you how surprising it is that someone in Congress at a public hearing would make such a clear statement and recognize it as accurately as you have. It is the first time in 5 years that I have ever heard anyone say it.

We very much appreciate that and will come and talk to you to give you some Hispanic references.

Mr. BATES. Thank you.

Mr. TORRES. The idea of an economic boycott is a very provocative one. It is a very interesting one, one that eventually will have to be responded to in the affirmative. It must come about eventually. But I think that it would be a mistake to exclusively depend on economic boycotts as the sole solution or pressure point on the media industry.

I think it must be a concerted effort by Congress. If Congress cannot pass legislation then certainly Congress can conduct hearings as it is doing oversight hearings on the discriminatory practices of the industry. I think that if Congress is putting that type of pressure on the media, if it is through the Department of Justice filing lawsuits against the media, and at the same time you have the pocketbook coming in from the consumer and at the same time you have Congress reducing the tax reductions and incentives that the media industry has and benefits from so financially, then I think that you are looking at a very comprehensive pressure front that in our opinion would have a tremendous impact on the media.

But I think that it must be done collectively, and it must be done comprehensively. I believe that with regards to selective viewing on the part of Hispanics and blacks, we hope it will be a reality in the very near future because it is our only avenue.

Mrs. COLLINS. If the gentleman will yield, I would like to make two points. First, I think we need to keep in mind that this subcommittee does not have authority over the Justice Department.

Second, we don't have any taxing powers. This is not a taxing committee. With that in mind, I hope that Reverend Jackson will give us a better perspective on what this particular subcommittee can do in the line of boycotts and what good it will do, et cetera.

Reverend JACKSON. Thank you very much.

I want to suggest that Congressman Bates' observation about the Congress losing moral authority because of inconsistency is valid but the Congress may or may not have moral authority but it still has legal authority. The extent to which it does have legal authority it must be employed even as it gets its own house in order.

For example, you have the power to subpena. You have the power to investigate. You have the power to expose facts before the public. You in fact have the power to establish a public platform.

Those are climate-setting elements that make a contribution. You combine climate-setting with selected boycotts—and they only work when they are selective and executed well, and for the most part they are very expensive to run—even if the media reserves the right to not televise news about a boycott, particularly if the company you are boycotting is one of your major advertisers—that is what makes them in many cases so insensitive because they can put a 30-second newsclip on about a boycott at night or they may choose not to put it on at night but still run commercials all day long selling the product that you are trying to boycott.

There is no check and balance there.

Somewhere between your subpena powers on the one hand, selected boycotts on the other, and in some instances good will. Some people are decent and do want to do the right thing. We ought to propose when possible ways out for people who are looking for remedies and approaches.

But I think this committee must exercise all the power it does have to do just what you are doing now, put the matter front and center.

Mr. BATES. Thank you.

Mrs. COLLINS. Thank you, Mr. Bates.

To either of the panelists there has been a lot of discussion, and particularly you, Reverend Jackson, about the image created of minorities by television, and by exclusion. In particular you said by portraying us as less than we are. There is a lot of discussion about education in our Nation today. What is wrong with—why is it that students are not more efficient than they should be proficient in whatever courses they are taking, et cetera. What impact do you think television has on children of all ethnic groups and what could be done if television were to portray each ethnic group in an enlightened fashion?

Reverend JACKSON. It seems to me, Congresswoman Collins, there is a combination factor, there is an investment by the Government with a profound impact in Government whether it is projected or not. This tendency of whether the cameras are rolling or not, to close schools while building jails reflects a fundamental shift in the Nation's values.

On the other hand, this is the first generation of children who by age 15 have watched 17,000 hours of television; they have listened to more radio than that, more than 20,000 hours, as compared with 11,000 hours of school and less than 3,000 hours of church.

That means that quantitatively the media has more access to our children's minds than home, church and school combined, and qualitatively the impressions are deeper.

It is the first generation of children at age 15 who are averaging 5 hours of television a night, choosing entertainment over education. They are not only entertained but entertained in ways that give them negative subconcepts and content that has no value in the marketplace.

If it is true that the media must be given what is required, the media having developed this power, in fact, must not be seen as

just a neutral medium or entertainment medium. It in fact has educational responsibilities. The media in fact does have educational responsibilities.

When we saw that some of the Head Start program, at their best and Sesame Street, the media put its attention on it, it did have the impact of lifting the educational levels of children. For the most part there is almost no commitment to use that power for the process of education and mind development.

Mrs. COLLINS. I have introduced a bill called H.R. 1155 which codifies what broadcasters should do in order to increase minority participation in telecommunications.

Do either of you feel the broadcasters should be required to provide a specific amount of children's programing? What about requiring minority programing in a positive light? Either of you or both.

Mr. TORRES. Correct me if I am wrong, chairperson, but supposedly at one time, the FCC was to try to encourage that to take place. As we see in deregulation it is not being done. Also I very much agree with the thrust of trying to insure that radio and television broadcasters make a much stronger commitment to children's programing besides cartoons.

It is also very important to insure that when it comes to minority programing that there is not the Hispanic and black half hour at 7 o'clock in the morning or 11:30 at night.

Reverend JACKSON. Or on Saturday.

Mr. TORRES. Or Saturday or Sunday at 6. There is certainly a major need to insure that Hispanics, blacks, women, and children are given much more ample opportunity to educate each other and educate the general public about themselves.

I think that legislation calling for such improvements must have an effective delivery mechanism, otherwise, how are you actually going to go about insuring that it is going to take place? I think that under the present administration good legislation will certainly be ignored, especially when it is trying to do something that is principled and right in this case.

So I think the key to it can effectively be whether, the oversight is conducted properly and whether the delivery mechanism is one that does have impact. But the thrust of what your legislation is attempting to do is one that we wholeheartedly support and embrace, because it is long overdue and it has not been done properly up to now.

Mrs. COLLINS. Reverend Jackson.

Reverend JACKSON. We support the thrust of this legislation. As the question was being answered, my mind went to two periods of the media that I recall at its best and at its worst.

When Dr. King was leading the civil rights movement in the South and was projected as a moral leader with unselfish concerns, willing to use nonviolence in the face of violence, there was this projection, and the result is the Nation became better; the Nation began to deal with those high moral principles.

But as soon as the Nixon administration came in—Nixon-Agnew—they attacked the media as being responsible for making the civil rights movement. And the media, under the direct attack by the President and then the Vice President, said rather loudly at

first, we will not be intimidated, we will not be intimidated, we will not be intimidated—softer and softer.

They were intimidated, and balance ceased to be blacks and Hispanics holding against the political order. It became Democrats versus Republicans. It took the media away from those outside the Government who were less predictable and less controllable. That was a kind of turning point.

That is why the shared ownership becomes important. Nothing is clearer than what happened in Chicago in the election of Harold Washington; is that after several major abuses to the black and Hispanic community, there was a move to change the political arrangement there within the law.

The major media projected our being abused as a form of entertainment and therefore took it unseriously. We called for a boycott based on the abuses. We were projected as fickle and nonsubstantial, and they predicted it would not work and would perhaps at worst turn into violence.

Meantime, black-owned and black-oriented radio communicated what was on our minds as opposed to their projection. The media, the major daily newspapers, major television stations all predicted that, (a) the boycott would not work. Well, it did work. They were just that disconnected. They had the power but no sense of responsibility. We say we would have a voter registration drive; they predicted we would get 50,000. We got 300,000.

Our only outlet was black-owned and black-oriented radio during that whole period. They predicted our candidate would not win. He did.

In each instance, they were distinctly apart from and even in confrontation with the community. So much so that until the night Harold Washington won his primary, some people in the media openly wept on television. That is how far their politics were into trying to control the minds of people in Chicago. It can be documented.

Mrs. COLLINS. Thank you.

Mr. Torres, earlier this week you testified to a rather interesting position, I thought, that Lou Riker found repeal of financial interest and syndication rule.

Do you want to tell us about that for this hearing record?

Mr. TORRES. Yes, Madam Chairperson.

In October and September last year, the league was approached by representatives of the networks, and we were taken to lunch a couple of times to discuss the syndication rule. An effort was made to secure our support, because as it was proposed to us, if they—networks—had control they would have more money; if they had more money, they would do more producing of minority programs, Hispanic emphasis; more hiring of Hispanics, more general attention to doing good community work in the Hispanic community.

We felt that the studios were not doing much to receive our support then, not any more than the networks were doing. So we embarked on a gamble. We felt that if we supported repeal of the syndication rule and worked with the networks in a good faith effort in a reasonable fashion, that progress could potentially be made.

After that, the studios came to us and began to ask us to get involved with them and cautioned us about the fact that the net-

works weren't really going to do anything and that the studios would. We visited with the studios, and the studios ended up telling us they didn't have the power to hire or do Hispanic programing but the networks had the power. This went on for a year, even though we met with the vice presidents and presidents of networks on more than one occasion.

We made various proposals to them for letters of agreement, memorandums of understanding, a number of things in paper that entailed very comprehensive programs of reaching out to the Hispanic community, much in the same light of what Mr. Jackson does with some of the corporations in the country and on which we were able to do jointly with the Southland Corp.

Unfortunately, a year later the progress that was made in our discussions is not one we would brag about. It is one that the networks could brag about, but it is certainly not one that we would brag about. As a consequence, we find that the position that the league has taken is one where the gamble didn't really payoff. We did not accomplish what we felt our good faith effort was going to, in our opinion, deserve.

So, as a consequence, we are going to have to alter that position somewhat. A new study we commissioned will be announced first week in October, and the altered perspective on this issue that the league has will be announced at that time.

It is very interesting to note that by the league getting involved in this syndication rule, it appeared as though the networks and studios went into a major war between the two to get other minority groups, black and Hispanic, American Indian, Asian, involved in this matter. When that happened, the studio felt that the tables had been turned on what generally has always been an industry issue.

The industry only deals with syndication being it has never really gone out to minority groups—or anyone else, for that matter—to get involved and pressure the powers that be to alter the rule. We felt that in view of the precedent that had been set, that the networks would be willing to cooperate. But very early in this effort, one of the networks' officials indicated that there was no quid pro quo in this effort; that this was totally different than them creating opportunities for Hispanics and other minorities as part of their overall operation. And it came to be the fact, because a year later there is very little progress.

I relayed a story on Monday which I would like to emphasize again today, if I may, Madam Chairperson, and that is that when we met with CBS, we asked them what progress had been made. We asked them, how many Hispanics did they have in this tremendous corporate giant in New York? They couldn't answer us. They didn't have those types of statistics.

But they did tell us insofar as programing progress—and one of their persons for programing was there—that when they made television movies, when they went out to places like San Francisco—this was the example used—that they encouraged their producers to use Chinese-Americans as extras, and that that was an example of the sensitivity that was growing within the CBS network.

Well, if they were dealing with Hispanics perhaps of 10, 15, 20 years ago, perhaps we would have said thank you, and that maybe

one of these days we can be extras. But I think Hispanics in today's times have changed. We are a little tired, for 20 years have gone by since.

I think that when you really deal with the networks—Mrs. Collins, I have reached this conclusion; it is an unbelievable experience—they don't understand what it really is to deal with the real world, with real people and real expectations and feelings. And I think in view of that, we can never anticipate the networks on their own bringing about any change.

Mrs. COLLINS. Reverend Jackson.

Reverend JACKSON. I would say this, in closing: I do not want those of you who are conducting the hearing to become discouraged and underestimate the impact of hearings like this. Yesterday, it was Tarzan on Tonto; today, it is Pancho and Sambo. They keep changing the symbols, but the bottom line is the same. Yet the persistent effort does make a difference.

I would hope that you would continue, among other things, to keep conducting these hearings outside the Washington market. Washington has become almost immune to any kind of criticism or test of that sort. We need these in Dallas and in Fort Worth and out where the people are, out in Chicago, because when you come into a given market, the very threat that your presence implies has their focus on this matter up on the front burner.

Oftentimes, if you assume the role of getting the matter surfaced on the front burner, it inspires people who otherwise would never have a chance to speak out and testify. And if you do nothing but serve as a catalyst to trigger interest in the proposition, it is a profound contribution.

I know that you will hear more complaints than you will have remedies. But I appeal to you to not be discouraged and keep conducting the hearings, but conduct many of them around the country in those key markets, because my own impression is that when they are conducted in Washington it is just kind of one of a thousand hearings.

Mrs. COLLINS. That is very true. But let me advise the gentleman that we have begun this series of hearings across the country. As a matter of fact, we had a hearing on July 1 in Los Angeles, a full congressional hearing just like this one. We had one in Chicago on July 6, a full congressional hearing just like this one. Congressman Bates had a forum in his district on July 26.

So we are beginning to spread out. It is extremely important.

Reverend JACKSON. And they work, too. They really do.

Mrs. COLLINS. I think it is worth pointing out at this point, particularly while the media is here, that we have no seats available—standing room only, wall-to-wall people—which attests to the fact that we are dead serious about what is happening in the media when it comes down to minorities and other ethnic groups.

Let me say at this particular point that we are delighted that all of our witnesses were here; that we are going to move along at this point and just ask if there is any final remark either of you would like to make at this time.

If not, let me offer a suggestion. Representatives from the FCC—particularly to Mr. Torres—representatives of the FCC and broadcast industry will testify later this morning.

What suggestions would you have for them when we talk about deregulation of telecommunications at the expense of the minority community?

Mr. TORRES. I think, in all honesty, Mrs. Collins, that the network officials, with the exception of one, I think they have probably been well-informed by us and their supervisors exactly what kind of recommendations we would make.

I think that my only closing comment to you is that we embrace what you have done, and we very much feel that, as the Reverend has indicated, much good can come from it. You can stimulate a great deal of outpouring of concern on the part of minorities and give them a focal point to direct their energies into.

The last point that is very important, that we want to stress, is some people think that when we come to this forum and raise our issues of the negative portrayal of Hispanics and nonportrayal of Hispanics, that we want a quota system—that for every Anglo we want a Hispanic, for every good Anglo we want a good Hispanic, for every bad Anglo we want a bad Hispanic.

We don't want to play that type of game. We do want to be in a position where we are part of the game and part of the decision-making process. I think that if people understand that it is not as frightening—as some people have cast the Voting Rights Act—Senator East claims that some of us want proportional representation. I think that that is a blatant effort by the Senator to misrepresent the concerns that minorities have in this country.

I think that it is an important thing to stress; that we simply want what is fair and what is right. And, clearly, the networks don't have the slightest idea of what those two terms are all about.

Mrs. COLLINS. Reverend Jackson.

Reverend. JACKSON. I would suggest, in closing, that there must be a correlation between a commitment to freedom of the press and fairness in the press. There must be a correlation between freedom and responsibility. By and large, the media has unlimited freedom, but it is hardly responsible in its portrayal in positive roles of nonwhite males, of women, of Hispanics, Asian-Americans, native Americans. I think they have been grossly unfair to us.

I would suggest to you that you continue to hold these hearings around the country, and that even though you make the observation that the media is present today, the persons who are here cover the news; they don't cut the news. These are not decision-makers who are here today.

I further suggest that there probably are more inspired by an issue that is hardly connected with this panel than the panel itself. And those who, in fact, make these big judgments, they must be appealed to or, if necessary, subpenaed to come here, because those who have the power must explain how they end up with all white males and no other people, or how they end up with white males being stars in the media, over 60, and women cannot make it past age 30, and that whole cosmetics of one group and substance for another.

It is just not blacks or Hispanics. The same syndrome applies to those who are nonwhite males. I would think that the more you discuss it and the more you debate it, the more it is going to be exposed. And once the public gets the spirit of it, the public will

begin to impact on the media at the local level and simply make them more sensitive.

Mrs. COLLINS. I thank this panel for appearing before us.

Our next panel will consist of: Mr. Allen Hammond, president, National Conference of Black Lawyers, Communications Task Force; Pierre Sutton, president, National Association of Black Owned Broadcasters; and Pluria Marshall, president, National Black Media Coalition.

Come forward, please, gentlemen. Let's start with you, Pluria. Mr. Marshall.

STATEMENTS OF PLURIA MARSHALL, PRESIDENT, NATIONAL BLACK MEDIA COALITION; PIERRE SUTTON, PRESIDENT, NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS; AND ALLEN S. HAMMOND IV, PRESIDENT, NATIONAL CONFERENCE OF BLACK LAWYERS, COMMUNICATIONS TASK FORCE

Mr. MARSHALL. Congresswoman Collins and members: It is a pleasure to have the opportunity to testify today on the effects of deregulation on minorities.

I think that it was stated very clearly earlier that deregulation really means that you are moving in a direction of ignoring the minorities of America. Oftentimes, regulations are not sufficient. We need special regulations to take care of our interests.

I think that in the area of radio, which has basically already been deregulated, the authorities and regulatory bodies have not been decent enough to even give the statistics of what has happened with deregulation of radio. A lot of people have lost jobs; many stations have stopped carrying news and informational programs because it isn't necessary any more. But there has been no report on it.

Everybody keeps talking about the new technologies going to eliminate the scarcity question. The scarcity question is still in place.

Television is not ready for deregulation, and I don't even know why we are here discussing it. We have less than a thousand television stations, and all the new technology is not producing and delivering news and informational programs.

I think that what we need to be talking about is how can we assure that the level of service that exists can be maintained, because the new services that are coming on are just looking for their plum out of the tree; they are not looking to serve. If it is pay movies, pay cable, some of the new pay services, you see everybody going after basically the big buck. I think something is going to have to be done, because we are an informational society and the direction that everything is going right now is away from that.

I think if you really take deregulation much further, the television industry is going to turn on Congress. I think that is a real danger. You all can play with it if you want to, but I think you will be very quick to try and correct a very serious mistake if you really deregulate television.

I think when you look at the consistent attention on equal employment opportunity rules, both in cable and in broadcasting, you will understand that any movement in the direction of deregula-

tion is simply going to make managers and owners feel that everything is deregulated now; we don't have to worry about those people any more.

Many of these owners and managers right today feel that deregulation does, in fact, include EEO, although it doesn't. The rules are on the books, and they are being monitored some; and it could be done a lot better.

I appear before you today to endorse H.R. 1155, in addition to H.R. 2331. I think both pieces of legislation go right into the eye of some very significant needs that ought to be in place. I think if the broadcasters want all of this new freedom, they ought to at least make sure that the opportunities are open to all Americans, and quit reserving this right for white men only.

I think that in cable television it needs extremely close scrutiny. Cable television today ought not be allowed in the black community because it has not allowed the black community into it. There isn't enough ownership of cable. This table is too big to put the black owners at. There may be a half-dozen significant systems in operation. When you look to employment in them and in programing, there is a big zero.

So when you start talking about deregulating cable and deregulating television, I think that there is clearly no evidence to suggest that this should be done.

With that, I have just one final point. When you look at the number of black news directors in television, executive producers, assignment managers and general managers, the four or five positions in television that control those stations, we have three black news directors in America, two black executive producers, we have six program directors, and we have I think about five general managers. When you look at where those program directors are and you compare their stations and their programs with other stations in the market, you can see that it makes a clear difference, because they are in place.

What we would recommend is that the industry be scrutinized closer, especially in the EEO areas, because the cable television and television does not reflect the American makeup as we know it.

Thank you very much.

Mrs. COLLINS. Thank you.

Mr. Sutton.

STATEMENT OF PIERRE SUTTON

Mr. SUTTON. I would like to express my gratitude to you, Congresswoman Collins, for the opportunity to address such an august assembly on the very pressing issue of broadcast deregulation. Although I come here wearing two hats, my remarks are delivered principally as president of the National Association of Black Owned Broadcasters, otherwise known as NABOB.

The National Association of Black Owned Broadcasters advocates an aggressive regulatory policy for the furtherance of minority ownership. By the close of 1982, minorities continued to own less than 2 percent of the total number of operating radio and television stations. The percentage of minority ownership in nonbroad-

casting services, such as cable television and common carrier services, is so minute as to be infinitesimal.

Moreover, it appears that the prospects for significant increases in the near future are extremely bleak. The magnitude of the ownership dilemma is made more dramatic when contrasted against the fact that these abysmal ownership figures persist despite the Commission's minority ownership policy, tax certificate policy, the minority ownership efforts of NTIA, and the stated commitment of the administration to continue the established minority ownership efforts.

Section 309(A) of the Communications Act of 1934, as amended, title 47, United States Code, section 309(A), requires the Commission, in granting a broadcast license, to determine that such a grant would serve the public interest, convenience, and necessity.

The Commission's concern with respect to whether racial minorities were adequately represented in the broadcast media was initially developed as a response to the Report of the National Advisory Committee on Civil Disorders, also known as the Kerner report, which was released in 1968. The Kerner report alleged that a contributing factor to the riots in American cities during the mid-sixties was the feeling, on the part of the minorities, that they were excluded from quality broadcast service, particularly with regard to news, and invisible over broadcast media, except for occasional derogatory caricatures.

As a partial response to the Kerner report, in 1969 the Commission established the first of its rules forging a policy fostering minority participation in broadcast media. The policy nondiscrimination employment practices of broadcast licensees forbid employment discrimination by broadcast licensees on the basis of race, color, religion, or national origin. In addition, it affirmatively required broadcast licensees to offer all qualified persons equal opportunity in employment.

A related development was the adoption by the Commission of ascertainment provisions, which required licensees to contact community leaders and members of the general public for the purpose of obtaining information about the interests of the total community of license, and to present programing responsive to those interests. Other steps implemented by the Commission were to award enhanced credit in comparative proceedings where minority owners would participate in station management and to expedite the processing of applications proposing significant minority ownership.

While the Commission was examining methods to increase minority involvement in the broadcast media, the courts were also making pronouncements in this area. The U. S. Court of Appeals for the District of Columbia observed in *Citizens Communications Center* v. *FCC*:

> Since one very significant aspect of the "public interest, convenience and necessity" is the need for diverse and antagonistic sources of information, the Commission simply cannot make a valid public interest determination without considering the extent to which the ownership of the media will be concentrated or diversified by the grant of one or another of the applications before it.
>
> * * * As new interest groups and hitherto silent minorities emerge in our society, they should be given the same stake in the chance to broadcast on our garbled radio and television frequencies.

The court again treated the issue of minority ownership in *TV 9, Inc.* v. *FCC*. In reversing a decision where the Commission had refused to award merit to an applicant in a comparative proceeding based upon minority ownership and participation, the court emphasized—and, Madam Chairwoman, here again I quot

> It is consistent with the primary objective of maximum diversification of ownership of mass communication media for the Commission in a comparative license proceeding to afford favorable consideration to an applicant who, not as a mere token but in good faith, as broadening community representation, gives a local minority group media entrepreneurship . . . we hold only that where minority ownership is likely to increase diversity of content, especially of opinion and viewpoint, merit should be awarded.

The Commission responded to the task force report with its Policy Statement on Minority Ownership of Broadcast Facilities. In the policy statement, the Commission noted the dearth of minority ownership in the broadcast industry, and recognized that increased minority participation in ownership and management of broadcast facilities would result in a more diverse selection of programing and would enhance the diversity of control of the spectrum.

In order to implement its minority ownership policy, the Commission initiated procedures which it indicated would be the first of several steps we expect to consider in fostering the growth of minority ownership. These steps enabled: One, the granting of tax certificates to assignors or transferors where the assignment or transfer would advance the policy of increasing minority ownership; and two, the assignment or transfer to qualified minority applicants at distress sale prices those licenses designated for revocation or renewal hearing, or licenses designated for hearings.

Despite the D.C. Circuit Court's holding, and the history I have just recounted, the FCC Review Board has recently adopted a policy of discounting minority ownership to the point of disregard. This new position was clearly reflected in two recent Commission hearings wherein minorities were applicants in competition with nonminorities. Despite the court pronouncements and the actions taken by past commissions—and I emphasize, past commissions—there continues to be an extreme disparity between the representation of minorities in the population and their ownership control and influence in the broadcasting industry.

I will digress to say that in the absence of the Commission, there will be no rules; and if there are no rules, there will be no benchmarks, no ways to determine who is properly serving the community license and ownership. Therefore, if there is no benchmark, no rules, then it cannot be determined whether or not an owner has been serving that community properly; and therefore there cannot be any change in ownership should that owner not be properly serving that community.

More than 3 years have passed since the policy statement was adopted. We are not in a position yet to evaluate how effective the Commission's policy has been. There have been increases in minority ownership subsequent to adoption of the statement, but these increases have not been sufficient to close the gap between the number of broadcast stations and the percentage of minority-owned broadcast stations generally.

Moreover, the Commission's recent deregulatory efforts in radio, soon to be duplicated in television, have removed the ascertainment requirement as well as the programmatic requirements which were initially developed to address the type of community issues that are of particular concern to minorities.

In light of the present state of "inaction" at the Commission on issues that are crucial to minorities, it is NABOB's position that a new regulatory offensive must be initiated if minorities are to ever achieve the parity in ownership that the minority ownership policy was designed to deliver. Deregulation is a boon to business and a bane to customers. Deregulation has never been adopted to benefit the community, although it has often been postured as such.

Witness the impact of airline deregulation, banking deregulation and the like. The black caucus cannot permit this fiasco to be repeated now in the all-important communications industry.

As Pluria mentioned, cable is virtually deregulated. The most we can achieve is the drafting of amendments that protect minority interests vis-a-vis the cable industry. We can act to prevent total deregulation of television, and I strongly suggest that this brain trust participate to the fullest in that proposed rulemaking.

Specifically, NABOB proposes that the caucus initiate the following legislation:

One, codify the present policy of comparative renewals affording minorities a comparative merit in both initial applications and comparative renewals.

Two, extend through legislation the recognition of merit for minority ownership in non-broadcast services applications, both in comparative hearings and lotteries.

Three, endorse the passage of telecommunications legislation presently proposed by Congressmen Rangel and Leland.

Four, endorse the passage of Congresswoman Collins' minority telecommunications bill.

Five, maintain FCC Form 395, EEO, through legislation.

Six, vigorously oppose the efforts of the administration—due to its concern over the "gender gap"—to award women a comparative preference equal or superior to minorities in various Commission administrative proceedings.

Thank you.

Mrs. COLLINS. Thank you.

Mr. Hammond.

STATEMENT OF ALLEN S. HAMMOND IV

Mr. HAMMOND. Thank you, Congresswoman.

First, I would like to thank the Congressional Black Caucus and the House Telecommunications Subcommittee for inviting me here today, and I would like to state out front that NCBL endorses both H.R. 1155 and H.R. 2331. We will try to put some of the items in a slightly different perspective and in the process respond to some of the specific provisions that have been proposed in the legislation.

Mrs. COLLINS. That will be fine.

What we will do is to place your written testimony in the record at this point and you may in fact summarize it in any fashion that you wish.

Mr. HAMMOND. Also, I would request that a fuller explanation which occurs in an article recently published be placed in the record.

Mrs. COLLINS. I am told that has already been made a part of the hearing record.

Mr. HAMMOND. Thank you.

Minorities have a very difficult time in dealing with the telecommunications system. As consumers we are not considered as demographically attractive as others. We are not adequately represented in the ratings. We are not likely to be as well represented as subscribers for new pay services as well, due to our economic status.

As citizens and individuals, despite the fact that we have a great need for substantial information to conduct our business, we are not able to seriously change, for instance, the current portrayals that we suffer from, due in part to the FCC's reluctance to seriously look at the content regulation. This is allegedly due to their concerns about the first amendment and section 326 of the Communications Act.

While that type of justification is not necessarily bad, deregulation would remove a lot of the other protections which the public and the minority public also enjoy.

For instance, ascertainment requirements would be removed. Responsive programing requirements would be removed. And hence there is a definite need for a quantification standard, if Congress decides that this is what they will do.

The quantification standard should address the types of programings or the need for programing by minorities and by children. Also, in terms of the cable bills that are presently being considered, you cannot, in my mind, remove the power of the cities to franchise and refranchise cable systems, because that is one of the few areas where minorities with any substantial political clout are able to exercise their need for responsive programing.

The petition to deny must stay, and if you are not going to keep a petition to deny, then the petition to revoke must be made much stronger. And there has to be some assurance, definite assurance, that there will be information on the performance of the licensee made available to the public on a regular basis through publication, and through public files, so that the burden placed on the public in coming before the FCC is not so substantial as to make the hearing a nullity before it begins.

Minorities as entrepreneurs, I think Mr. Sutton has indicated quite well, that we suffer substantially from the fact that we have less than 1 percent of the total video outlets in this country, less than 1 percent of the common carrier outlets in this country.

New technology is very important for us. The new technological outlets, as they come on board, MDS, LPTV, DBS, SMATV, promise to increase the number of opportunities for small and minority businesses to be involved in the telecommunications industry.

The opportunities for us in ownership are presently unrealized. Our access to these technologies is not as great as it should be. In fact it is limited even further by the other large established telecommunications enterprises who are not restricted from entry and can in fact bid up the price to such an extent that we cannot compete for entry.

The new opportunities for minorities which could be realized in video technologies are very important for several reasons, aside from an increase in the diversity of viewpoints which is extremely necessary given the way in which we are presently portrayed, and, our very limited access to established media.

Small and minority firms, tend to be more innovative, because they have to be in order to compete. Small firms are more likely to hire new people. They are usually new firms and hence have a need to hire more people as opposed to an established firm that may acquire a company, or acquire an entity and not increase the employment pool.

And, for minorities, ownership in new businesses by definition will increase economic self-sufficiency, something we desperately need.

The danger of deregulation, as I mentioned earlier, is that there will be an increased concentration in the ownership of the technologies. The very important provisions of the Leland bill can be adopted but they will be undermined if the Commission is allowed to remove the rule of 7s and if the Commission is allowed to remove various cross-ownership restrictions, such as network-cable. If the Leland bill and Collins bill are to have any effect on this trend toward deregulation, they must also adopt restrictions on the entry of established video firms, and a definite preference for minority and small business. And, lest people be convinced somehow that large established firms are very interested in service to minorities--not to say that they are not interested in some instances—take an example of a memo which was sent to Los Angeles by one of the networks recently stating that, "Reduced weight will be given to any movie proposals submitted to this network if any of the central characters, are other than white Americans." The memo was later withdrawn.

You can go back to Broadcasting magazine from last year in August. I will be more than happy to give you the citation and you can find reference to that document there.

The EEO provisions of the Collins bill must be implemented but Congress must maintain substantial oversight over FCC enforcement of EEO in the industry, and more importantly, Congress must maintain substantial oversight of EEO at the Commission.

With regard to children, it was earlier asked whether or not the media was an important influence. Very briefly, Reverend Jackson's comments regarding the time spent with the media were very accurate.

There is also social science research which emphasizes that children's perceptions of minorities can be substantially affected by the media portrayals they watch.

There is a study which indicates a clear correlation with extended TV viewing and antisocial or racially biased viewpoints in adults.

Going on to the network financial interest in syndication discussion earlier this morning—I think Lulac has learned a very important lesson. The networks are in fact not responsive but they had a better PR campaign. Basically that is what happened there.

I am not saying that Hollywood is any more responsive or responsible. Any time the NAACP can hold an award ceremony for

blacks in the movies and find that they only have one award to give because there had been only one black in a particular movie at the time, it is outrageous. Any time there are so many black actors and actresses out of work in Hollywood, the major studios have no reason to argue that they will give us any better service than the networks. However, the network financial interest in syndication did assist small producers by protecting them from having to give up creative control of their product to the networks.

New technology is not sufficiently strong to assure competition against the networks at this time and cannot yet create the type of demand which will allow creative programing sources to develop.

Moreover, the new technologies are by and large not presently responsive to the public in the way in which television is responsive. They are mostly pay technologies. They provide movies and sports, not public affairs programing or news programing, of the sort that television is, at this point required to provide.

Again, the quantification standard is important if you are going to get rid of other basic regulations. And, at the risk of causing a stir, it may very well be that the broadcasters are in part right. If you are going to require them to serve the public, then you ought to at the same time give them support in terms of the way in which they compete with the new technologies.

I think that is a subject that Congress ought to look into quite seriously.

But, in order for minority ownership to mean anything, there have to be a new set of restrictions placed on entry by established firms. I want to emphasize that again. That means that you can't have MDS broadcaster cross ownership, cable network cross ownership, DBS broadcaster cross ownership, newspaper MDS cross ownership, or newspaper cable cross ownership, until and unless small firms that have previously not been allowed entry or have not had an opportunity to enter, and minority firms who are in the same situation have a chance to increase their percentage of ownership within the telecommunication industry.

Thank you very much.

[Statement of Mr. Hammond follows:]

NOW YOU SEE IT, NOW YOU DON'T:

Minority Ownership in an "Unregulated" Video Marketplace
Testimony of Allen S. Hammond, IV, Chairperson, National Conference of Black Lawyers, Communications Task Force Before the House Subcommittee on Telecommunications, Consumer Protection and Finance and the Congressional Black Caucus Communications Braintrust. September 23, 1983.

Recent technological innovations and liberalized FCC entry policies have stimulated an explosion in the number and type of video program distribution facilities. FCC decisions authorizing multi-point distribution facilities(MDS), low power television (LPTV), and direct broadcast satellite distribution (DBS) combined with the removal of programming restrictions on cable television(cable) and subscription television(STV)services have served to hasten the creation of what most observers term the new video marketplace. The above services are presently being joined by satellite master antenna television services (SMATV), a hybrid of satellite and cable technology.

Like cable in the early seventies, this new cornucopia of video outlets provides major opportunities for small and minority firm entry into the expanded marketplace of the eighties. Historically minorities have owned and operated few video distribution outlets and have received little minority-relevant programming. Currently, less than one percent of the operating video outlets are minority-owned despite the fact that minorities comprise more than 20% of the American population.

The lack of minority participation in ownership is extremely serious for several reasons. First, minority ownership of video production and/or distribution firms can have a profound positive impact upon the diversity of information which the American society receives about itself

and the world. Second, the current technologically motivated innovation and growth within the video industry could spawn small firms which are more likely to create disproportionately greater employment opportunities and more innovative services than their larger established counterparts. Third, increased minority ownerhsip would facilitate the expansion of an economic base within the minority community and allow minorities to make a more enduring contribution to the general welfare as employers, and as producters of goods, services, and innovation.

Rapid technological growth in video distribution facilities has stimulated two major developments: 1)federal reassessment of the Commission's ownership restrictions(the "rule of sevens" and the cable-network crossownership rules) and 2)accelerated merger and acquisition activity by large established video distribution firms. The impetus for the reassessment of the rule of sevens and cross ownership rules by the Executive Branch, the Congress, and the Commission is the assumption that the anticipated plethora of distribution outlets will dispell the need for federal regulation of media concentration to assure program diversity. Instead, the large number of competitive outlets will assure that consumer demands for program service are met.

Meanwhile, the large established video distribution firms are moving to protect or expand their market shares by merging with or acquiring other distribution facilities. This phenomenon is understandable, theactions of the established firms when combined with the removal of federal ownership restrictions, threaten to destroy the entry and competition opportunities which technology and the government have created.

The danger in the adoption of the current set of FCC proposed "market regulation" l'aissez faire policies is that the removal of ownership restrictions at a time of accelerated merger and expansion activity by large commuications firms

will seriously undermine minority and small firm entry into the video marketplace. The cost of capital and entry into lucrative markets will be substantially increased by virtue of competition from larger better financed telecommunications firms which have previously been unresponsive to specialized consumer demand.

The conclusion that the increased number of present and potential outlets will force entrepreneurs to provide responsive programming to presently underserved groups is at best uncertain and at worst unwarranted. Advertiser or subscriber based demand for services will continue to reflect current target market preferences (albeit more specialized) by virtue of the distribution of wealth. Moreover, the ultimate cost of the production and distribution of specialized programming is relatively unknown, as programmers and/or distributors seeking to serve distinct groups must compete for limited financing with other competitors seeking to serve audiences perceived as more desirable. Hence the warning of former FCC Commissioner Margita White in a policy paper submitted to the FCC is particularly apt:

> "...the FCC in structuring entry and establishing licensing procedures for new and developing technologies must continually consider whether its proposed policies will encourage or preclude minority entrants.
>
> For example, the FCC promulgated ownership and other rules to promote diversity of media control, including minority ownership. .. their abrupt removal could result in greater market dominance by established entities, less diversity and fewer opportunities for new entrants...including minorities."

Recent Commission activity seeking to increase minority ownership of the established technologies has been lauded on several occasions. The expanded and new tax certificate initiatives are needed to render many minority entrepreneurs more financially competitive. They will undoubtedly be used. However, the Commission declined to extend the ownership policy to the newer services such as MDS. It also seeks to decrease or eliminate its current multiple and cross ownership rules as well as other regulatory mechanisms for achieving structural diversity. The contradictory nature of the Commission's actions have caused growing concern that "the deregulation package has a minority ownership ribbon wrapped around an empty box."

Efforts to stimulate meaningful minority media ownership require the unrestricted availability of affordable competitive outlets for purchase. Commission restrictions on the numerical concentration of media ownership have contributed significantly to the assurance of such availability. Without such ownership restrictions, the utility of the financial intiatives is substantially diminished, for the economic cost of entry can be bid up by larger firms capable of paying inflated rates for preferred properties. Current minority experiences in seeking to acquire cable systems and franchises as well as current merger and acquisition trends among large communications conglomerates support such observations. Moreover, the proposed policy shift has serious implications for the continued viability of the underlying justification for the minority ownership effort. Commission diversification policies which rely on marketplace competition rather than diversity of ownership must necessarily diminish the importance of a minority ownership policy based upon diversity of ownership.

If structural competition is most likely to facilitate maximum diversity of viewpoints, minority ownership becomes superfluous because the market will provide for minority

viewers consistent with the relative priority of their articulated demand. If market share rather than the number and location of outlets is the operative criteria upon which levels of concentration and hence diversity are assessed, the number of facilities owned by many firms will likely grow beyond current limits. Concommittantly, as previously stated, the cost of entry will most likely rise higher than current levels, as the cost of highly valued properties and the percentage of the market necessary to insure the ability to compete increases. Consequently, the theoretical basis for minority ownership is undermined while the practical ability to facilitate it is diminished substantially.

The subsequent impact of the Commision's deregulatory efforts on minority ownerhsip of and service from the video distribution industry is likely to be significant and largely negative in terms of economic self-sufficiency and diversity. Such a result would be tragic, and inequitable not only because it would be manifestly unresponsive and contrary to the nationally recognized need for substantially increased minority socio-cultural and economic representation in the media. It would also be tragic because it is based on the premature implementation of a suspect regulatory philosophy which is at best ill conceived and at worst, wrong.

As this subcommittee has noted, the Commission, while ignoring the data, asserts that because of potential competition --- that is today provided by ahost of new outlets, it must immediately achieve 'unregulation'... To argue for allowing marketplace forces to govern, instead of regulation, while taking actions that limit competition, both disserves the industry and undermines the public interest."

The Commission must seriously reexamine and reevaluate its current deregulatory thrust. Though admirable in its intent, the new policy direction threatens to "throw the baby out with the bathwater." Such a result would hardly be in the public's interest.

Mrs. COLLINS. Thank you very much.

I am going to have the questions on a 5-minute rule. From here on the panelists will have 10 minutes to summarize their statements so we can proceed in an orderly manner.

I think that, Mr. Hammond, you have mentioned your feelings when it comes down to the new proposal by the FCC.

Mr. Marshall, you are aware, of course, that the FCC, in this morning's paper there is an article saying FCC proposes a new rule for broadcast ownership that is to eliminate the 777. What are your thoughts on that, and also you, too, Mr. Sutton?

Mr. MARSHALL. Well, I think it is a dangerous move. There are some responsible broadcast companies who would probably improve the services in stations that they acquired if they acquired more stations, but the effect that it would have on minority ownership is, it would probably wipe out minority ownership. I think that what you are talking about is an era that will disappear because the three or four companies that are able to compete now to obtain properties would, even after they obtained them, would be hard pressed to hold on to them because they would be sought after by so many big buck companies who would simply buy them out, and I think that if Congress and the FCC is concerned about minority ownership at all, it will leave the rule of 7 in place.

Mr. SUTTON. I would suggest that in an environment where there are no rules we will see a form of anarchy in the telecommunication industry area.

If you remove the limitation on the number of radio stations and/or television stations that are to be owned by any single entity, you will find that giant conglomerates attracted by the huge profits that are possible will tend to gobble up all those available facilities to the exclusion of minorities, small entrepreneurs, and with the disregard to the intended policy of Congress and earlier FCC Commissions with respect to diversification of ownership of these broadcast facilities.

Mrs. COLLINS. Either of you can answer this question.

Should the minority community be content to rely on the National Association of Broadcasters' successful Broadcap program, which is a clearing house for the many conferences that they schedule as a way to increase minority employment and ownership. Why or why not?

Mr. MARSHALL. Well, I think that Broadcap is one of the tools in place that does in fact assist in increasing minority ownership, but I don't think it is any kind of entity for us to put our faith in to make sure that ownership is increased. I think the central problem is still the absence of opportunity, and not whether or not you can get the financing to turn the deal.

Mr. SUTTON. Let me respond to that by saying if the NAB adequately represented the needs of minorities, particularly black broadcasters, then there would be no NABOB, that is, association of black owners.

Mr. HAMMOND. I think that is just one tool. Broadcap has done some very good things but there is a greater need and I don't think that the National Association of Broadcasters, which is by the way to be commended for all its efforts in the area, is the best place for a large number of other efforts. Realistically speaking, in many in-

stances minorities and other small businesses will be encouraged to compete against established broadcasters. That is just a realistic qualification on NAB involvement.

Mr. MARSHALL. Let me say, it seems like you mentioned the area of equal employment and National Association of Broadcasters. NAB has been responsible on 18 different occasions to either eliminate the rules or water them down, so weak as to render them ineffective. We certainly hope there isn't any conversation to indicate that they are even concerned about the EEOC rules because there certainly has been no initiative to strengthen them or get them in force from that trade association.

Mrs. COLLINS. Mr. Hammond, you mentioned quantification, and that is a matter that this subcommittee as a whole is going to be taking up in a very short period of time. As you well know, right now there are three categories that have been discussing quantification. One, is public affairs and news, a second is whole programing, and a third is the total amount of entertainment type.

It has been suggested by a number of us in working subcommittees that those quantifications should not be so broad, because if they are broad there is no way to allow for then to be an inclusion within the quantification of minorities and children, et cetera.

What are your views on that?

Mr. HAMMOND. The old system wasn't so bad, first requiring ascertainment, requiring people to go to the various elements of the community, requiring people to understand what the needs and interests of those elements of the community were, was one way of assuring that at least there was input into the programing decisions that were made by broadcasters so that the output was more responsive to the public.

Another aspect that will qualify broadcasters service would be adequate representation of minorities within the structure of the broadcast station, the top of management level, all the way down. There is always going to be a difficulty in constructing a standard which tests whether or not a particular broadcaster or the broadcaster's programing is responsive or not responsive to minorities, but we manage to live with the 1960 policy statement which makes responsive programing to minorities one of the things that broadcasters have to take into account. We managed to live very well with the ascertainment requirements. I think they should remain in place.

Mrs. COLLINS. I want to ask the same question of you, Mr. Sutton. Let me make this point.

I agree with you, Mr. Hammond, that the present system has some merits, but what we are interested in now is how the present system and any future systems can be made better, and since the subcommittee is talking about quantification at this time, there is some impact, now is the time to get views of it. I think the question I will direct to you in this regard, Mr. Sutton, is would you think when we are talking about quantification and the bill that we are going to be writing, we might want to put something in about EEO provisions?

One, about ownership preferences and things of that nature, if we are really talking about getting serious about quantification.

Mr. SUTTON. Clearly there is an opposition to quantification. It seems that there is a philosophical disregard to the need for a change for the better of minority participation.

I would say to you that in the FCC we have seen a reduction of the number of minorities in significant policymaking positions. In fact, there are no minorities in significant policymaking positions rather at the FCC.

I would further suggest to you that there is but one way for us to get in a position where we can, when I say we I am talking about minorities—in a position so we may make positive decisions that affect minorities, and that is through quantification.

Mrs. COLLINS. Thank you. Do you think that quantification, if we were able to get a quantification bill passed and enacted would be the proper enforcement mechanism? Right now, all we have with the FCC is possibly a $500 fine. What would you suggest would be an appropriate tool for enforcement.

Mr. MARSHALL. Well, I think the fine should probably be raised to a minimum of $10,000 and the Commission should have a very clear-cut rule that you always jeopardize the license that you hold if in fact you are in violation of the standard.

Mrs. COLLINS. Mr. Bates.

Mr. BATES. No questions.

Mrs. COLLINS. All right, supporters of total broadcast deregulation contend even in the absence of the comparative renewal hearing process the public has an opportunity to file petitions to deny and revoke. Is this a fair quid pro quo? Either of you.

Mr. MARSHALL. I think the petition process should remain in place. The removal of the petition process really takes the broadcasters almost completely off the hook because, I mean how else are you going to address their intentions if that valuable process is removed?

Mr. SUTTON. I suggest that the public hearing is the only way that we can be certain of what the thinking is behind the awarding of a license, one way or another. If merely petitions were the guide to a decisionmaking, then we don't know what the process is. We don't know what it is based upon, we don't know upon what the decision was actually based on.

If there is a public hearing, then everyone has an opportunity to see clearly how the decision was arrived at.

Mr. HAMMOND. With regard to comparative renewals, correct me if I am wrong, but in most other areas in which the Commission bestows licenses upon businesses to conduct service over the electromagnetic spectrum, the license is for a term of years and the license is up for grabs. There are a number of instances in which the Commission has already decided to allow competitive renewals, most recently in cellular, with regard to licenses which AT&T holds. I don't think it is too much to ask a broadcaster that they be required to defend themselves and their records before the FCC.

Now, if you are going to get rid of the comparative renewal process, then you must assure first of all that the quantification system is in place. If you are going to get rid of ascertainment, which I don't think you should do, make sure that the evidence necessary to meet the burden of going forward in a petition to deny or a petition to revoke is available to the public in the public file at the

broadcaster's station. Otherwise, as I said earlier, the hearing makes no sense. There is no way for the public to establish what in fact is going on. No matter who you are, even if you may watch 5 hours of television per day you cannot see everything. It is not possible. So in order to assure that the public has an adequate chance to make its case, that information should be made available.

The program log should be there. The program log should be able to indicate what was shown at what time. The broadcaster is going to keep those logs anyway. If you don't know what was shown and what commercial was shown, you can't bill people.

Mrs. COLLINS. Let me interpret you at this time. I think you have just said that there should be a kind of a quantification or there could be a kind of quantification that would work. My concern is even with the bill that we are talking about right now, do you think that you are going to obtain full minority participation that we have been talking about here today, without a requirement in quantification for minority programing?

Mr. HAMMOND. No, I don't think we will.

Mrs. COLLINS. I think that pretty much answers that question.

You made a statement a little while ago that you had a paper that had been sent out by the networks saying if there were *x* numbers of blacks in movies—is that right?

Mr. HAMMOND. The memo was mentioned in an article in Broadcasting magazine. It is cited in the article which I put in the public record in your earlier hearing in Chicago. Let me find the actual cite—the August 9 issue of Broadcasting magazine, 1982, at page 61 it is discussed.

Mrs. COLLINS. Thank you very much.

I want to read that into the record.

I thank all of you gentlemen for appearing before us this morning.

Mr. BATES. I would like to thank them for appearing. I think they made some points and we have to act on them.

Mrs. COLLINS. Mr. Marshall.

Mr. MARSHALL. I would like to say that if there is any way Congresswoman Collins, that the Black Caucus could use its influence with the black mayors and NBC Leo to have some greater impact on the cable process at the local level, it would certainly be helpful.

In Atlanta, the cable franchise is changing hands and in that town that we are so proud of, it would be a tragedy for another almost all-white company to own the cable franchise in Atlanta. So I would encourage the caucus to have more dialog and especially under your and Mr. Leland's leadership to impress upon them the importance of blacks beginning to control the cable franchises in cities that we are basically in charge of.

Mrs. COLLINS. Mr. Sutton.

Mr. SUTTON. Yes, ma'am. The only thing I would like, that I would like to end up with is to attempt to draw the attention of Congress, and particularly the caucus, to the reality of the fact that there is clearly at this point a move to classify all of the new technologies as common carriers, all of the new technologies, which therefore removes them from any regulatory provision, EEO and everything else included.

We are talking about DDB, we are talking about a cellular roadway and all of these technologies are currently being put into a common carrier status, which removes them again from the spectrum of regulatory proceedings, and that would be a real travesty. We are talking about absolute removal of a responsibility to minority communiites.

Mr. HAMMOND. I would like to emphasize with regard to cable that that is one of the reasons why city control of the franchising process must remain intact. It is the same situation that you have with the petition to deny. Cablecasters have no more right to expect a license or franchise in perpetuity than a broadcaster does.

Mrs. COLLINS. Thank you.

Our next witnesses are going to consist of Mr. Tom Wheeler, president of the National Cable Television Association; Mr. James McKinney, who is chief of the Mass Media Bureau of the Federal Communications Commission, and Mr. Erwin Krasnow, who is senior vice president and the general counsel of the National Association of Broadcasters.

Won't you come forward, please.

In an effort to speed this hearing along we are going to ask that each of the panelists confine their remarks to within 10 minutes and we are going to have the clock going and we members are going to be under the 5-minute rule.

Why don't we begin with you, Mr. Krasnow.

STATEMENTS OF ERWIN G. KRASNOW, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF BROADCASTERS; JAMES C. McKINNEY, CHIEF, MASS MEDIA BUREAU, FEDERAL COMMUNICATIONS COMMISSION; AND THOMAS E. WHEELER, PRESIDENT, NATIONAL CABLE TELEVISION ASSOCIATION

Mr. KRASNOW. Thank you. Good morning.

In the interest of saving time I would like to place in the hearing record my prepared statement.

Mrs. COLLINS. Without objection.

Mr. KRASNOW. And also, we prepared for the caucus and the subcommittee a background briefing book of materials and research studies supporting the statement, and we would like to have that considered for inclusion in the record also.[1]

Mrs. COLLINS. Also, without objection, so ordered.

Mr. KRASNOW. It is clear from the hearings this morning that the phrase "broadcast deregulation" means different things to different people. It has been used over the years to describe situations ranging from a cosmetic reordering and renumbering of FCC regulations to the elimination of virtually all regulations.

Some of the testimony this morning proceeds on the assumption that broadcast deregulation and the end of public trusteeship responsibilities are synonymous. Indeed, this is the assumption made by the chairman of the FCC, Mark Fowler, who has urged Congress to and the public trustee model and impose no affirmative obligations on broadcasters to serve the public interest.

[1] The background briefing book "Broadcast Deregulation Legislation: Its Impact on Minorities and the Public Interest" may be found in the subcommittee files.

Unlike Chairman Fowler, NAB supports the public trustee concept. We believe that broadcast deregulation legislation should retain the public interest standard contained in the Communications Act. We believe broadcasters recognize and wish to preserve their unique status as public trustees and their special responsibilities to serve their local communities.

Much of the debate on broadcast regulation is flawed as a result of misunderstandings both as to the provisions of the broadcast deregulation bills pending before Congress and the terms of the FCC's radio deregulation decision.

I would like to review some of the general statements made about broadcast deregulation which are at best misleading and in some cases just wrong.

Myth No. 1, broadcast deregulation would eliminate all license renewal procedures which ensure that broadcasters remain accountable to the public. This is wrong.

It is often said that broadcast deregulation would guarantee broadcasters a license in perpetuity. All of the broadcast deregulation bills preserve the petition to deny process which allows members of the public to challenge the renewal of broadcast licenses.

Myth No. 2 is that broadcast deregulation will result in reductions in news and public affairs programming.

We have submitted in our background paper notebook a series of studies showing that there are increases in the variety and diversity of formats since radio deregulation, and there have been no substantial decreases in news and public affairs programs.

Myth No. 3 is that broadcast deregulation will result in the loss of jobs in programing, especially for minorities. Although there are a lot of allegations we know of no trend, no statistics, either on a national or regional basis, toward fewer jobs in the broadcasting industry as a result of deregulation.

And neither the FCC radio deregulation decision nor any of the broadcast deregulation bills proposes diminishing the FCC rules and policies on equal opportunity. Indeed, much of the thrust of deregulation is to add new services to the diversity of available telecommunications services, adding to the opportunities for diverse programing and jobs. Indeed, one of provisions of S. 55, the deregulation bill passed by the Senate, would encourage competition, would have the FCC mandated to encourage the development of competitive and diverse sources of broadcasting programing, and the introduction of new and additional services to consumers.

Myth No. 4, broadcast deregulation will result in broadcasters failing to ascertain all elements of the communities they serve.

It has been said that the FCC's radio deregulation decision in effect says that broadcasters no longer have an obligation to seek out and to learn about needs and interests in their community. That is just wrong.

The FCC did eliminate formal ascertainment and a section of our background notebook consists of page after page of legal gobbledygook, a Byzantine system of formal ascertainment. The FCC did get rid of the detailed paperwork but they did say to broadcasters that they still had to fulfill the underlying purpose of ascertainment—to broadcast relevant programing, relevant to community issues.

Myth No. 5 is that broadcast deregulation would reverse the Commission's minority ownership goals. I think it is clear that the legislation would basically have no adverse impact on policies to promote minority ownership. And in this connection, we support legislation in Congresswoman Collins' bill, and also in Congressman Leland's bill, which would codify and extend tax certificates and also investment credits.

We think those provisions are consistent with deregulation legislation. They proceed on the assumption that there should be positive incentives in the marketplace as opposed to the old system of taking a punitive attitude toward noncompliance with governmental rules and policies.

There was talk in the earlier panel about comparative hearings and the opportunity for minorities to be awarded preferences. One of the things overlooked thus far in this hearing is an anaylsis of new FCC procedures, which have been authorized by Congress, namely, the lottery. NAB is opposed to the lottery, the random selection process. We believe that such a process dilutes the preference which would be awarded minority applicants in furtherance of minority ownership goals, and is a subject that is worth revisiting by the Congress.

In conclusion, I would like to emphasize that broadcast deregulation does not sound the death knell for public interest obligations for the broadcast industry; and contrary to a lot of the rhetoric, there would be no adverse impact on the pursuit of equal opportunity goals or the promotion of minority ownership.

Thank you.

Mrs. COLLINS. Thank you very much.

[Testimony resumes on p. 184.]

[The statement of Mr. Krasnow follows:]

STATEMENT OF ERWIN G. KRASNOW

Eddie Fritts, the President of the National Association of Broadcasters, expresses his regret that due to a prior scheduling commitment in Maine, he is unable to testify today. He asked that I convey to the Subcommittee and the Communications Braintrust his appreciation for providing the NAB with an opportunity to present its views on the impact on minorities of legislation to deregulate the broadcast industry. The subject is an important one and deserves careful consideration by the Congress.

The phrase "broadcast deregulation" means different things to different people. It has been used to describe situations ranging from a cosmetic reordering and renumbering of FCC regulations to the elimination of virtually all regulations. Most articles in the general press proceed on the assumption that broadcast deregulation and the end of public trustee responsibilities are synonymous. Indeed, this assumption is made by FCC Chairman Mark Fowler who has urged Congress to abandon the "public trusteeship" model and impose no affirmative obligations on broadcasters to serve the public interest.

Deregulation: Preservation of the Public Trusteeship Model

Unlike Chairman Fowler, NAB supports the public trusteeship concept. NAB believes that broadcast deregula-

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tion legislation should retain the public interest standard contained in the Communications Act. Broadcasters recognize -- and wish to preserve -- their unique status as public trustees and their special responsibility to serve their local communities. Retention of these obligations is consistent with the deregulation legislation which NAB supports.

While supporting retention of the public interest standard, NAB is also committed to passage of legislation designed to lessen government oversight of programming decisions. In our view, such legislation would foster First Amendment values as well as eliminate unnecessary paperwork and outdated regulations. We agree with the theme of the FCC's radio deregulation decision that competitive market forces, economic incentives and the growth of new technologies can be relied on to secure the public interest benefits that existing regulation is designed to achieve. That is the theme of S.55, unanimously passed by the Senate in February of this year, H.R.2382, the Tauke-Tauzin bill, a broadcast deregulation measure that has garnered 191 cosponsors, and H.R.2873, the counterpart of S.55, cosponsored by Representatives Luken and Oxley. H.R.2382 would provide assurance of license renewal to broadcasters who have not shown a serious disregard for the provisions of the Communications Act and the rules and regulations of the FCC. A similar standard is contained in S.55 except that television stations would also have to demonstrate that their programming substantially met local problems, needs and interests.

Each of the broadcast deregulation bills recognizes that the original rationale for regulation of broadcasting, namely, spectrum scarcity, must be reevaluated in light of the present media environment. In the years since the scarcity rationale was first articulated, there have been dramatic changes. In 1934, for example, there were 585 AM stations and no FM or television stations on the air. As of June 30 of this year, there were 4,720 commercial AM stations, 3,441 commercial FM stations and 844 commercial television stations (528 VHF, 316 UHF). There were also 1,091 FM educational radio stations, 172 educational UHF TV stations, and 111 educational VHF TV stations. Members of the public also receive programming distributed by cable, multipoint distribution services, satellite master-antenna television and soon, low power television stations and direct broadcast satellites.

Myths of Broadcast Deregulation

The debate on broadcast deregulation is often flawed as a result of misunderstandings both as to the provisions of H.R.2382, H.R.2873 and S.55 and the terms of the FCC's radio deregulation decision. I would like to review some of the general statements made about broadcast deregulation legislation which are at best misleading and in some instances, wrong. As a way of developing a more comprehensive record for this joint hearing, we have prepared and distributed today a notebook of background materials which,

among other matters, summarizes studies conducted by the NAB and other organizations on the comparative renewal process and the impact of radio deregulation on programming.

Myth #1. Broadcast Deregulation Would Eliminate All License Renewal Procedures Which Ensure that Broadcasters Remain Accountable to the Public.

A common misconception is that broadcast deregulation would guarantee broadcasters licenses in perpetuity, and would eliminate avenues by which the Commission and the public can ensure that broadcasters deliver service in the public interest.

S.55, H.R.2382 and H.R.2873 preserve the petition to deny process, which allows members of the public to challenge the renewal of a broadcast license. The petition to deny allows interested parties to request the Commission to review the past performance of a broadcast station. The process enables the Commission to designate for hearing the renewal application of a station which may have violated FCC rules and policies. Revocation of license may result, enabling new parties to compete for the license.

It is important to distinguish the petition to deny process from the comparative renewal process. The comparative renewal process allows any party to challenge the renewal of a license with a competing application. Unlike the petition to deny, comparative renewals automatically trigger costly and time-consuming administrative hearings.

Unlike the petition to deny, the comparative renewal process is generally invoked by business interests intent primarily on securing a valuable broadcast license, rather than on improving the responsiveness of broadcast service. So, unlike the petition to deny process, the comparative renewal process does not generally promote a dialogue between broadcasters and the publics they serve. For these reasons, S.55, H.R.2382 and H.R.2873 would abolish the comparative renewal process, but preserve the right of members of the public to file petitions to deny. NAB believes that members of the public should continue to have the right to file a petition to deny at license renewal time setting forth reasons why a station's license should not be renewed.

Myth #2. Broadcast Deregulation Will Result in Reductions in News and Public Affairs Programs.

Another common misconception is that the FCC, in its radio deregulation decision, announced that broadcasters need no longer be responsive to the needs and interests of their communities. The Commission's decision, however, made clear that each radio licensee retains public interest obligations, including an obligation to provide programming "responsive to community issues." The thrust of the Commission's decision is the recognition that in a dynamic and expanding telecommunications marketplace, competitive forces have ensured and will continue to ensure that broadcasters will be responsive. The Commission therefore abandoned an outdated

and overly intrusive form of regulation for a method better tailored to the realities of the broadcast industry.

Studies of the broadcast industry both before and after the 1981 radio deregulation decision support the FCC's action. NAB studies in 1980 determined that radio stations in all sized markets were substantially exceeding the Commission's guidelines for nonentertainment programming, on average by a two to threefold margin. Studies conducted last year by the Radio-Television News Directors Association determined that for nine out of ten stations, the radio deregulation decision had no impact on the amounts of news and public affairs programming presented. And for those stations reporting changes in the amounts of news programming, there was only a one percent net decrease in news coverage.

An August, 1983 study on the impact of radio deregulation on the diversity of radio formats determined that the total number of radio formats increased 5.2 percent between 1980 and 1983, and in smaller markets, the increase was 18 percent. Across the country, the number of radio stations providing black format programming more than 20 hours per week increased by about 15 percent, Spanish language programming increased 56 percent, all-news formats increased 73 percent, and religious programming formats increased over 20 percent.

Similar trends are present with respect to the video marketplace. In the past decade, most television mar-

kets have experienced an influx of new video technologies and services which are changing dramatically the diversity of available programming. A glossary of existing and authorized new video services -- pay per view, superstations, subscription television, multipoint distribution services, low power television and direct broadcast satellites -- have forever altered the status of competition in the video marketplace.

Myth #3. Broadcast Deregulation Will Result in the Loss of Jobs in Programming, Especially for Minorities.

We know of no trend -- either on a national or regional basis -- toward fewer jobs in the broadcasting industry as a result of deregulation. Based on employment statistics compiled by the FCC for 1982, the latest year, there was an increase of 4,495 employees at stations having five or more employees, a gain of 3.2 percent over 1981 figures. Of the 131,589 employees classified in the top four categories (Official and Managers, Professionals, Technicians and Sales Workers), women represented 34,093 (25.9 percent) and minority persons totaled 16,757 (12.7 percent); comparable 1981 statistics showed 127,177 employees in the upper-four categories, of which 31,647 (24.9 percent) were women and 16,156 (12.7 percent) were minority.

Neither the FCC's radio deregulation decision nor any of the broadcast deregulation bills proposes diminishing the FCC's rules and policies governing equal employment

opportunity. Part and parcel of the FCC's deregulatory program is the expansion in the number of programming outlets. The Commission's decisions involving direct broadcast satellites, multichannel multipoint distribution service, FM allocations, subscription television, teletext and low power television are designed to increase the diversity of available telecommunications services. This will also result in increases in the amount and diversity of opportunities, both from an employment and an ownership perspective.

Deregulation legislation will hasten this process. As stated in the opening provisions of S.55, the bill is intended to "encourage the development of competitive and diverse sources of broadcast programming and the introduction of new and additional services to consumers" and to review those broadcast rules and policies "that are not necessary, or those which limit competition." The elimination of superfluous broadcast regulation is long overdue, and will help create a more competitive environment, with greater opportunities for participation.

Myth #4. Broadcast Deregulation Will Result in Broadcasters Failing to Ascertain All Elements of the Communities They Serve.

The FCC, in its radio deregulation decision, did not free broadcasters of the obligation to ascertain the needs, interests and problems of the communities. Indeed, the Commission reaffirmed the continuing obligation of broadcasters to maintain contacts with their communities, to

determine issues of concern, and to broadcast programming responsive to those issues. The Commission distinguished this obligation from the formalized ascertainment methodology, whose extensive procedural detail had the effect of obscuring the "underlying purpose of ascertainment -- to foster relevant programming relating to community issues."

While the FCC decided to eliminate formal ascertainment procedures for commercial radio stations, it expressly rejected a more comprehensive proposal to eliminate ascertainment obligations completely. The Commission made clear that "broadcasters will have to maintain familiarity with their community in order to be kept apprised of the issues facing it" and "maintain contact with their community on a personal basis."

Myth No. 5: Deregulation Legislation Would Reverse the Commission's Minority Ownership Goals.

In 1978, at the urging of NAB and others, the FCC issued a Statement of Policy on Minority Ownership of Broadcasting Facilities. The underlying philosophy of this policy recognizes that minorities and minority viewpoints will not be fairly represented in broadcasting without significant increases in minority ownership of broadcast properties. The Commission has implemented this policy by (a) issuing tax certificates for the sale of broadcast properties or interests in broadcast properties to minorities; (b) allowing an existing licensee whose license has been designated for

hearing to sell the station at a distress sale, or less than market value, price if sold to a group with a "significant minority interest;" and (c) according a minority applicant in a comparative proceeding an additional merit. NAB has supported all three policies. Indeed, NAB petitioned the Commission to adopt the tax certificate concept in 1978. And in connection with awarding comparative merits to minority applicants in the licensing process, NAB has opposed the concept of lotteries or random selection as a method of selecting licensees -- such a process dilutes the preference which would should be awarded minority applicants in furtherance of minority ownership goals.

S.55, H.R.2382 and H.R.2873 would have no impact on these policies to promote minority ownership. To the contrary, by creating positive, marketplace incentives to increase minority participation in broadcast ownership the tax certificate and distress sale policies are consistent with the deregulatory philosophy of S.55, H.R.2382 and H.R.2873. I note, in this regard, that NAB supports H.R.2331 which would allow the issuance of tax certificates for sales of non-broadcast properties to minorities and would permit minority entrepreneurs to obtain investment tax credits for the purchase of communications properties. NAB also supports similar provisions contained in H.R.1155.

Conclusion

Misconceptions abound concerning broadcast deregulation legislation. For example, neither S.55 nor H.R.2382 would dilute the Commission's enforcement of the fairness doctrine or any of the political broadcast requirements (e.g., equal opportunities, lowest unit charge and reasonable access for federal candidates). The Commission would retain power to levy fines and revoke licenses for violations of the Commission's substantive rules. The public and citizens groups would still be able to participate effectively in the license renewal process. As I mentioned earlier, the petition to deny process would allow those dissatisfied with a station's performance to challenge a license renewal. The test of renewal would continue to be whether the station served the public interest.

In sum, broadcast deregulation legislation does not sound the deathknell of public interest obligations for the broadcast industry. If this legislation is passed, we can expect very little, if any, change in the amounts of news and public affairs programming. And the news and public affairs programming presented will be responsive to real community needs and interests, not to the dictates of a government bureaucracy.

There will be no adverse impact on the pursuit of equal employment opportunity goals, nor on the promotion of minority ownership. We urge your favorable consideration of S.55, H.R.2382 and H.R.2873.

Mrs. COLLINS. Mr. McKinney.

STATEMENT OF JAMES C. McKINNEY

Mr. MCKINNEY. Thank you very much, Congresswoman Collins. And let me say this is my first trip to the Hill since being appointed chief of the Mass Media Bureau, and I am very pleased to be with you here today.

I have extensive comments which I will ask be inserted in the record, and I will be brief in my remarks here today.

Mrs. COLLINS. Without objection, so ordered.

Mr. MCKINNEY. The full text of the testimony goes into three areas. First, it identifies several actions that the Commission has taken to assure equity in employment practices of its licensees. Second, it discusses steps that the Commission has taken to increase ownership opportunities for minorities in the field of telecommunications. And finally, it furnishes the results of the Commission's review regarding the legislation that is under discussion here today.

While statistics often are justly viewed as sterile and uninteresting, I believe that those concerning minority and female employment in the broadcasting and cable industries are instructive. In 1982, the most recent year for which complete figures are available, minorities represented 15.3 percent of all full-time broadcast employees, and 12.7 percent of the employees in the upper four job categories; that is, officials, managers, professionals, technicians, and salesworkers.

Women constituted 34.5 percent of all employees, and 25.9 in the upper four. Contrast this with just as recently as 10 years ago when only 9.9 percent overall employees, and 8.4 in the upper four, were minority individuals.

In 1981, 9,176 new positions were created in the broadcast industry. Overall, the number of women increased by 4,729; minorities by 3,393.

In 1982, the industry created 6,102 positions, and the number of minorities increased by nearly 1,000.

Cable television systems also have improved in the employment picture for both women and minorities. In 1981, 13.9 percent of all cable employees were minorities; and in 1982, that number had risen to 15.2 percent.

In addition, when licensee efforts have been found to be deficient, the Commission has taken action. In 1981, the Commission Mass Media Bureau reviewed the EEO programs of 2,817 broadcasting stations. Forty percent of the programs involving stations with five or more employees were found to be questionable. And while some 80 percent of those questionable eventually were found sufficiently affirmative not to require further action, the remaining 20 percent were notified of deficiencies and were advised of measures necessary to remedy the defects, and other actions were taken, as well.

Turning to minority ownership, in 1978 the Commission adopted its statement of policy on minority ownership of broadcasting facilities. The accordance of merit to minority ownership and participation in management and comparative proceedings for new stations

and expedited proceedings of the application filed by stations with significant minority ownership interests had been a feature of the Commission's policy for several years.

The 1978 policy statement introduced two new aspects of that policy; tax certificates and distressed sales, which have been discussed previously. In adopting the tax certificate policy, we stated that a sale to parties with significant minority interests would entitle the assignors or transferors to tax certificates under a provision of the Internal Revenue Code. That enables them to defer the capital gains taxation. This has had the effect of encouraging sales to minority buyers and reducing the sales price, in many instances. The basis for the treatment is that in such situations it appears likely diversity of programing will result from the transfer and the grant will advance the policy of increasing minority ownership.

The distress sale policy permits licensees whose licenses or applications have been designated for hearing, on basic qualifying issues, to transfer or to assign their licenses at distressed sale or discounted prices to applicants with significant minority ownership interests.

Since the Commission began issuing tax certificates, 62 have been issued in connection with the sale of broadcast stations to minorities. I would add, presently 29 of those certificates were issued in less than 2½ years of the Fowler Commission. Since 1978, the Commission has approved 27 distress sales and the licensees of an additional four stations have elected to seek distress sales.

In September of 1981, the Commission commenced an initiative that significantly advanced the cause about which we speak today. Chaired by Commissioner Henry Rivera and composed of distinguished members from both the public and private sectors, the Commission's Advisory Committee on Alternative Financing for Minority Opportunities began deliberating on what is characterized as the single greatest obstacle to preventing further gains in minority ownership, and that is financing.

In May of 1982, the committee presented its recommendations to the Commission; and in December, the Commission acted on the recommendations. A copy of the news release concerning that is attached to the full statement.

Briefly, in response to the advisory committee's recommendation, the Commission issued a policy statement extending the tax certificate policy to the sales of cable television systems to minority entities and it expanded the scope of the tax certificate policy where minority-dominated limited partnerships are involved. In this regard, we reduced the proportion of the limited partnership that must be owned by the minority general partners before a tax certificate can be issued from more than 50 percent to a minimum of 20 percent, and that is intended to enhance the ability of minority general partners who control an entity to attract the investment of other partners, thereby increasing the ability of the minority entrepreneurs to capitalize on their venture.

I will summarize. I want to stress that the Commission has been and continues to be active in fostering equal employment opportunities and minority ownership. As the statistics I referred to earlier demonstrate, our EEO programs are being enforced, having posi-

tive results, and we have taken actions to enhance ability of minorities to own facilities throughout the United States.

Thank you very much.

[Testimony resumes on p. 211.]

[The statement of Mr. McKinney follows:]

STATEMENT OF JAMES C. MCKINNEY

CHIEF, MASS MEDIA BUREAU

FEDERAL COMMUNICATIONS COMMISSION

GOOD MORNING, MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE AND MEMBERS OF THE BLACK CAUCUS COMMUNICATIONS BRAINTRUST: I WELCOME THE OPPORTUNITY TO ADDRESS YOU ON BEHALF OF CHAIRMAN FOWLER WITH RESPECT TO OUR COMMON CONCERNS REGARDING OPPORTUNITIES FOR MINORITY EMPLOYMENT BY, AND MINORITY OWNERSHIP OF, TELECOMMUNICATIONS FACILITIES.

I WILL STRESS SEVERAL POINTS IN MY TESTIMONY. FIRST, I WILL IDENTIFY SEVERAL ACTIONS THAT THE COMMISSION HAS TAKEN TO ASSURE EQUITY IN THE EMPLOYMENT PRACTICES OF ITS LICENSEES. AS WILL BE SEEN, GREAT ADVANCES HAVE BEEN MADE IN MINORITY AND FEMALE EMPLOYMENT IN THE BROADCAST AND CABLE INDUSTRIES IN THE PAST DECADE. SECOND, I WILL DISCUSS STEPS THE COMMISSION HAS TAKEN TO INCREASE OWNERSHIP OPPORTUNITIES FOR MINORITIES IN THE FIELD OF TELECOMMUNICATIONS. FINALLY, I WILL SHARE WITH YOU RESULTS OF THE COMMISSION'S REVIEW REGARDING THE LEGISLATION UNDER DISCUSSION.

WHILE STATISTICS OFTEN ARE JUSTLY VIEWED AS STERILE AND UNINTERESTING, I BELIEVE THAT THOSE CONCERNING MINORITY AND FEMALE EMPLOYMENT IN THE BROADCAST AND CABLE INDUSTRIES ARE INSTRUCTIVE.1/ IN 1982, THE MOST RECENT YEAR FOR WHICH COMPLETE FIGURES ARE AVAILABLE, MINORITIES REPRESENTED 15.3 PERCENT OF ALL FULL TIME BROADCAST EMPLOYEES AND 12.7 PERCENT OF EMPLOYEES IN THE UPPER FOUR JOB CATEGORIES (I.E., OFFICIALS AND MANAGERS, PROFESSIONALS, TECHNICIANS, AND SALES WORKERS). WOMEN CONSTITUTED 34.5 PERCENT OF ALL BROADCAST EMPLOYEES AND 25.9 PERCENT OF EMPLOYEES IN THE UPPER FOUR CATEGORIES. CONTRAST THIS WITH AS RECENTLY AS TEN YEARS AGO, WHEN 9.9 PERCENT OVERALL EMPLOYEES AND 8.4 PERCENT OF UPPER FOUR JOB CATEGORY EMPLOYEES WERE MINORITY INDIVIDUALS AND 23 PERCENT OF ALL EMPLOYEES AND 9.7 PERCENT OF UPPER FOUR EMPLOYEES WERE WOMEN.

1/ I NOTE THAT THE DEFINITION OF "MINORITY" USED IN THE PROPOSED LEGISLATION IS IDENTICAL TO THAT CURRENTLY USED BY THE COMMISSION: "AMERICAN INDIANS, ALASKAN NATIVES, ASIANS AND PACIFIC ISLANDERS; BLACKS NOT OF HISPANIC ORIGIN, AND HISPANICS."

SINCE 1973 THERE HAS BEEN STEADY PROGRESS, AND, EVEN DURING THE RECENT RECESSION, THE BROADCAST INDUSTRY CONTINUED TO HIRE NEW INDIVIDUALS AND THEREBY INCREASED THE REPRESENTATION OF WOMEN AND MINORITIES IN THEIR WORKFORCE. IN 1981, 9,176 NEW POSITIONS WERE CREATED IN THE BROADCAST INDUSTRY. OVERALL, THE NUMBER OF WOMEN INCREASED BY 4,729 AND MINORITIES BY 3 393. IN 1982, THE INDUSTRY CREATED 6,102 NEW POSITIONS. THE NUMBER OF WOMEN INCREASED OVERALL IN THE INDUSTRY BY 2,324 AND MNIORITIES BY 913. CABLE TELEVISION SYSTEMS ALSO HAVE IMPROVED THE EMPLOYMENT PICTURE FOR WOMEN AND MINORITIES. IN 1981, NEARLY 13.9 PERCENT OF ALL CABLE EMPLOYEES WERE MINORITY GROUP MEMBERS AND 34.4 PERCENT WERE WOMEN. IN 1982, 15.2 PERCENT OF ALL CABLE EMPLOYEES WERE MINORITIES AND 34.7 PERCENT WERE WOMEN. NATIONALLY, 43 PERCENT OF ALL POSITIONS ARE HELD BY WOMEN AND 18 PERCENT ARE HELD BY MINORITIES. 2/

I BELIEVE THAT THE PERFORMANCE OF THE BROADCAST AND CABLE INDUSTRIES DEMONSTRATES THAT THE COMMISSION'S EEO POLICIES ARE HAVING SUBSTANTIAL AND POSITIVE RESULTS WITH IMPROVEMENT OCCURRING ALMOST EVERY YEAR.

IN ADDITION, WHEN LICENSEE EFFORTS HAVE BEEN FOUND TO BE DEFICIENT, THE COMMISSION HAS TAKEN ACTION. IN 1981, THE COMMISSION'S MASS MEDIA BUREAU REVIEWED THE EEO PROGRAMS OF 2,817 BROADCAST STATIONS. FORTY PERCENT OF PROGRAMS INVOLVING STATIONS WITH FIVE OR MORE EMPLOYEES WERE FOUND

2/ THESE FIGURES PERTAIN TO FULL-TIME EMPLOYEES AND WERE DERIVED FROM THE "MONTHLY INDUSTRY AND OCCUPATION TABLES FOR THE MONTH OF AUG. 83" PUBLISHED BY THE BUREAU OF LABOR STATISTICS (BLS). IT IS DIFFICULT TO MAKE A COMPARISON BETWEEN NATIONAL FIGURES AND BROADCAST INDUSTRY FIGURES WITH RESPECT TO UPPER FOUR JOB CATEGORIES, AS THE BLS DOES NOT UTILIZE THE SAME JOB CATEGORIES AS DOES THE COMMISSION. IN ATTEMPTING, HOWEVER, TO RECONCILE THE DIFFERENT JOB CLASSIFICATIONS, THE BLS STATISTICS MUST BE COMPARED WITH COMMISSION STATISTICS WITH CAUTION. FOR INSTANCE, THE BLS CATEGORY THAT COULD BE COMPARED TO THE COMMISSION'S CATEGORY "PROFESSIONALS" INCLUDES AT LEAST TWO SUB-CATEGORIES INAPPLICABLE TO BROADCASTING BUT IN WHICH WOMEN PREDOMINATE (I.E., "TEACHERS, EXCEPT COLLEGE AND UNIVERSITY" AND "HEALTH ASSESSMENT AND TREATMENT"). ALSO, THE BLS FIGURES FOR MINORITIES INCLUDE ONLY BLACK AND HISPANIC INDIVIDUALS IN THE WORKFORCE, WHEREAS COMMISSION STATISTICS INCLUDE OTHER MINORITY GROUPS, AS WELL.

QUESTIONABLE, AND, WHILE SOME 80 PERCENT OF THOSE FOUND QUESTIONABLE EVENTUALLY WERE FOUND SUFFICIENTLY AFFIRMATIVE NOT TO REQUIRE FURTHER ACTION, THE REMAINING 20 PERCENT WERE NOTIFIED OF THE DEFICIENCIES AND WERE ADVISED OF THE MEASURES NECESSARY TO REMEDY THE DEFECTS. IN 1982, THE MASS MEDIA BUREAU REVIEWED THE EEO PROGRAMS OF SOME 2,731 STATIONS. IMPROVEMENTS BY LICENSEES RESULTED IN FEWER PROGRAMS BEING FOUND QUESTIONABLE. THE BUREAU HAD QUESTIONS ON 30 PERCENT OF THE PROGRAMS AND, AGAIN, WAS ABLE TO RESOLVE THE VAST MAJORITY OF QUESTIONS WITHOUT THE NEED FOR FURTHER ACTION. BY THE END OF THIS FISCAL YEAR WE EXPECT TO HAVE REVIEWED APPROXIMATELY 3,190 EEO PROGRAMS AND TO HAVE QUESTIONED NEARLY 25 PERCENT OF THESE.

WHERE ACTION AT THE STAFF LEVEL HAS NOT RESOLVED QUESTIONS CONCERNING A LICENSEE'S EEO PROGRAM OR ITS COMPLIANCE WITH COMMISSION REQUIREMENTS, THE COMMISSION HAS NOT HESITATED TO TAKE EFFECTIVE MEASURES TO ACHIEVE COMPLIANCE. THIS YEAR TO DATE FOR INSTANCE, THE COMMISSION HAS ISSUED SOME 80 LETTERS OF ADMONITION AND IMPOSED REPORTING CONDITIONS ON 28 BROADCAST STATIONS, AND ADDITIONALLY HAS REQUIRED THAT HIRING GOALS AND TIMETABLES BE ESTABLISHED BY FIVE OF THESE STATIONS, AND HAS GRANTED SHORT-TERM RENEWALS TO FOUR STATIONS BASED UPON INADEQUATE EEO PERFORMANCE. WITH THE RECENT MERGER OF FORMER CABLE AND BROADCAST BUREAUS, OUR ONGOING EEO ENFORCEMENT IN THE CABLE AREA HAS BECOME A PRIORITY. IN APRIL, 1983, AFTER AN ON-SITE INVESTIGATION, THE COMMISSION CITED THE LARGEST CABLE MULTIPLE SYSTEM OPERATOR FOR AN INADEQUATE EEO RECORD BY IMPOSING BOTH GOALS AND TIMETABLES AND REPORTING CONDITIONS. OUR STAFF IS CONTINUING ITS EEO REVIEW OF SMALLER CABLE UNITS, AS WELL.

IN ADDITION TO OUR EFFORTS IN THE LICENSING AREA ARE STRUCTURAL MEASURES THAT THE COMMISSION HAS TAKEN TO ENHANCE OPPORTUNITIES FOR MINORITIES IN TELECOMMUNICATIONS. IN 1978, THE COMMISSION ADOPTED ITS STATEMENT OF POLICY

ON MINORITY OWNERSHIP OF BROADCASTING FACILITIES. THE ACCORDANCE OF MERIT TO MINORITY OWNERSHIP AND PARTICIPATION IN MANAGEMENT IN COMPARATIVE PROCEEDINGS FOR NEW STATIONS AND EXPEDITED PROCESSING OF APPLICATIONS FILED BY APPLICANTS WITH SIGNIFICANT MINORITY OWNERSHIP INTERESTS HAD BEEN A FEATURE OF COMMISSION POLICY FOR SEVERAL YEARS. THE 1978 POLICY STATEMENT INTRODUCED TWO NEW ASPECTS OF THAT POLICY--TAX CERTIFICATES AND DISTRESS SALES. IN ADOPTING THE TAX CERTIFICATE POLICY, WE STATED THAT A SALE TO PARTIES WITH SIGNIFICANT MINORITY INTERESTS WOULD ENTITLE THE ASSIGNORS OR TRANSFERORS TO TAX CERTIFICATES UNDER A PROVISION OF THE INTERNAL REVENUE CODE, ENABLING THEM TO DEFER CAPITAL GAINS TAXATION. THIS HAS THE EFFECT OF ENCOURAGING SALES TO MINORITY BUYERS AND ALSO REDUCING THE SALE PRICE, IN MANY INSTANCES. THE BASIS FOR THIS TREATMENT IS THAT IN SUCH SITUATIONS IT APPEARS LIKELY THAT DIVERSITY OF PROGRAMMING WOULD RESULT FROM THE TRANSFER AND THE GRANT WILL ADVANCE OUR POLICY OF INCREASING MINORITY OWNERSHIP. THE DISTRESS SALE POLICY PERMITS LICENSEES WHOSE LICENSES OR APPLICATIONS HAVE BEEN DESIGNATED FOR HEARING ON BASIC QUALIFYING ISSUES TO TRANSFER OR TO ASSIGN THEIR LICENSES AT "DISTRESS SALE," OR DISCOUNTED, PRICES TO APPLICANTS WITH SIGNIFICANT MINORITY OWNERSHIP INTERESTS, PRIOR TO THE ACTUAL INITIATION OF THE HEARING.

SINCE THE COMMISSION BEGAN ISSUING TAX CERTIFICATES, APPROXIMATELY 62 HAVE BEEN ISSUED IN CONNECTION WITH THE SALE OF BROADCAST STATIONS TO MINORITIES. I WANT TO ADD PARENTHETICALLY THAT 29 OF THESE CERTIFICATES HAVE BEEN ISSUED IN THE LESS THAN TWO AND ONE-HALF YEARS OF THE FOWLER COMMISSION. SINCE 1978, THE COMMISSION HAS APPROVED 27 DISTRESS SALES, AND THE LICENSEES OF AN ADDITIONAL FOUR STATIONS HAVE ELECTED TO SEEK DISTRESS SALE.

In September, 1981, the Commission commenced an initiative that significantly advanced the cause about which we speak today. Chaired by Commissioner Henry Rivera and composed of distinguished members from both the public and private sectors, the FCC Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications, began deliberating on what it characterized as "the single greatest obstacle in preventing further gains" in minority ownership--financing. In May, 1982, the Committee presented its recommendations to the Commission, and, in December, the Commission acted on these recommendations. (A copy of the news release summarizing the Commission's actions is attached to this testimony.)

Briefly, in response to the Advisory Committee's recommendations, the Commission issued a Policy Statement extending the tax certificate policy to sales of cable television systems to minority entities and expanding the scope of its tax certificate policy where minority-dominated limited partnerships are involved. In this regard, we reduced the proportion of the limited partnership that must be owned by the minority general partners before a tax certificate can be issued, from more than 50 percent under prior policy, to a minimum of 20 percent. This is intended to enhance the ability of minority general partners who control an entity to attract the investment of other limited partners, thereby increasing the ability of minority entrepreneurs to capitalize their ventures.

Also in recognition of the fact that in the telecommunications industry minority entrepreneurs face both high start-up costs and possibly lengthy periods before generation of revenues, our latest Policy Statement extended tax certificate availability, from initial investors providing minority entrepreneurs with start-up funds, to investors purchasing shares within one year after the license is issued, provided that the stock was acquired in

ORDER TO ASSIST IN THE FINANCING OF THE BROADCAST OR CABLE FACILITY AND THAT THE SALE OF THE STOCK DOES NOT REDUCE THE MINORITY OWNERSHIP AND CONTROL OF THE FACILITY BELOW 51 PERCENT. ADDITIONALLY, IN THE DISTRESS SALE AREA, LAST DECEMBER WE DELEGATED THE AUTHORITY OVER MOST PETITIONS SEEKING DISTPESS SALE AUTHORIZATION TO THE MASS MEDIA BUREAU, IN ORDER THAT THEY MAY RECEIVE MORE EXPEDITIOUS HANDLING. THE COMMISSION ALSO SOUGHT COMMENT UPON ANOTHER METHOD OF CREATIVE FINANCING THAT MAY HAVE THE POTENTIAL TO ENHANCE THE ABILITY OF MINORITY ENTREPRENEURS TO OBTAIN CAPITALIZATION--PERMITTING SELLER FINANCING IN THE CASE OF SALES OF FACILITIES TO MINORITIES, WITH THE SELLER RETAINING A REVERSIONARY INTEREST IN THE LICENSE.

THIS PAST JANUARY WE ALSO INAUGURATED A THOROUGH REEXAMINATION OF OUR RULES AND POLICIES REGARDING THE ATTRIBUTION OF OWNERSHIP INTERESTS IN BROADCAST, CABLE TELEVISION AND NEWSPAPERS. THIS ACTION WAS MOTIVATED IN PART BY A RECOGNITION THAT OUR CURRENT MULTIPLE OWNERSHIP ATTRIBUTION RULES MIGHT HAVE THE EFFECT OF CREATING BARRIERS TO NEW ENTRANTS, AND ESPECIALLY MINORITY ENTRANTS, INTO TELECOMMUNICATIONS BY INHIBITING THE POTENTIAL AVAILABILITY OF INVESTMENT CAPITAL. I SHOULD ADD THAT WE SOUGHT COMMENT SPECIFICALLY UPON THE QUESTION OF THE ATTRIBUTION STANDARDS THAT SHOULD BE ACCORDED SMALL BUSINESS INVESTMENT COMPANIES (SBIC)--AND MINORITY ENTERPRISE INVESTMENT COMPANIES (MESBIC). YESTERDAY, SEPTEMBER 22, 1983, THE COMMISSION ADOPTED A NOTICE OF PROPOSED RULEMAKING ASKING WHETHER WE SHOULD REVISE OUR NATIONAL MULTIPLE OWNERSHIP RULE (THE "7-7-7 RULE") TO PERMIT INDIVIDUALS OR CORPORATIONS TO OWN GREATER NUMBERS OF STATIONS. WHILE IT IS IMPOSSIBLE TO PREDICT THE ULTIMATE EFFECT OF SUCH A DEVELOPMENT ON MINORITY BROADCASTERS, IT IS LIKELY THE ADOPTION OF A HIGHER OWNERSHIP CEILING WILL INCREASE OPPORTUNITIES FOR MINORITY VENTURE CAPITALISTS.

ANOTHER STRUCTURAL MEASURE THE COMMISSION HAS TAKEN TO FURTHER THE GOAL OF MINORITY OWNERSHIP OF TELECOMMUNICATIONS FACILITIES IS TO INCREASE THE NUMBER OF AVAILABLE OUTLETS THEMSEVLES. FOR INSTANCE, OUR INAUGURATION OF THE LOW POWER TELEVISION SERVICE PROVIDES AN EXCELLENT OPPORTUNITY FOR THOSE WITH LITTLE CAPITAL OR LITTLE EXPERIENCE IN THE OPERATION OF A BROADCAST FACILITY TO ACHIEVE ENTRY INTO THE FIELD. OUR RULES IMPLEMENTING THE LOTTERY ENACTED BY CONGRESS PROVIDE A 2:1 PREFERENCE FACTOR FOR APPLICATIONS IN THE MASS MEDIA SERVICES IN WHICH MORE THAN 50 PERCENT OF OWNERSHIP INTERESTS ARE HELD BY MEMBERS OF MINORITY GROUPS. THE FIRST DRAWING FOR LOW POWER LICENSES UNDER THE LOTTERY IS SCHEDULED TO TAKE PLACE NEXT WEEK ON SEPTEMBER 29, 1983, AND I NOTE THAT 23 OUT OF 91 APPLICATIONS TO BE CONSIDERED IN 29 LOTTERIES CLAIM A MINORITY PREFERENCE.

TO THE SAME END, IN AMENDING OUR RULES CONCERNING CLEAR CHANNEL AM BROADCASTING STATIONS, WE SPECIFICALLY EXPANDED OUR ACCEPTANCE CRITERIA FOR AM APPLICATIONS FROM ONLY THOSE THAT WOULD PROVIDE FIRST NIGHTTIME SERVICE TO ACCEPTANCE OF APPLICATIONS FOR AM STATIONS IN LARGER CITIES WHERE MORE THAN 50 PERCENT OF THE OWNERSHIP INTEREST IS HELD BY MINORITY PERSONS OR WHERE THE APPLICANT PROPOSES NONCOMMERCIAL OPERATION AND SERVICE. THIS SHOULD HAVE THE EFFECT OF ESTABLISHING MORE MINORITY OWNED AM RADIO STATIONS IN METROPOLTAN AREAS, THUS ENHANCING THE OPPORTUNITIES FOR MINORITY OWNERSHIP AND IMPROVING THE PROGRAM SERVICE AVAILABLE TO MINORITIES IN THOSE LOCATIONS WHERE THERE MAY BE THE GREATEST NEED. WE ALSO ARE IN THE PROCESS OF IMPLEMENTING DOCKET 80-90, WHICH COULD INCREASE THE NUMBER OF FM RADIO STATION AVAILABILITIES NATIONWIDE.

FINALLY, IN THE AREA OF MINORITY OWNERSHIP I WANT TO POINT OUT THAT THE COMMISSION HAS TAKEN SPECIAL EFFORTS TO INFORM MINORITIES INTERESTED IN TELECOMMUNICATIONS OF AVAILABLE OPPORTUNITIES. IN THIS REGARD, OUR OFFICE OF

PUBLIC AFFAIRS MAINTAINS A "BUYERS' LIST" OF MINORITIES INTERESTED IN PURCHASING TELECOMMUNICATIONS FACILITIES. THIS LIST IS SENT TO BROKERS SEEKING PURCHASERS. AN ADDITIONAL LISTING IS KEPT OF MINORITY ENTREPRENEURS ALREADY ENGAGED IN BROADCASTING WHO ARE LOOKING TO DIVERSIFY INTO OTHER TELECOMMUNICATIONS RELATED AREAS AND WHO HAVE REQUESTED TO BE KEPT ABREAST OF OPPORTUNITIES IN, FOR INSTANCE, THE CABLE TELEVISION FIELD. ALSO, AS A RESULT OF THE EFFORTS THE MINORITY ADVISORY COMMITTEE, THE COMMISSION RECENTLY ENTERED INTO A MEMORANDUM OF UNDERSTANDING WITH THE MINORITY BUSINESS DEVELOPMENT AGENCY OF THE DEPARTMENT OF COMMERCE FORMALIZING A COOPERATIVE EFFORT TO PROVIDE MANAGEMENT ASSISTANCE TO MINORITY TELECOMUNICATIONS ENTREPRENEURS. BOTH AGENCIES PLEDGED TO UTILIZE THEIR RESOURCES TO PARTICIPATE IN MBDA SPONSORED MINORITY BUSINESS DEVELOPMENT PROGRAMS AND, WHERE APPLICABLE, TO POOL INFORMATION USEFUL TO MINORITY BUSINESSES.

SEVERAL OF THE COMMISSION'S DEREGULATORY PROCEEDINGS, MOST NOTABLY RADIO DEREGULATION AND SHORT-FORM RENEWAL, HAVE NOT HAD THE SUPPORT OF MANY GROUPS REPRESENTING MINORITIES. I BELIEVE, HOWEVER, THAT A STRONG CASE CAN BE MADE THAT THESE POLICIES AID MINORITY BROADCASTERS TO AS GREAT AN EXTENT AS THEY AID NONMINORITY BROADCASTERS. FIRST, AS IS EVIDENT FROM MY PREVIOUS REMARKS, THE COMMISSION HAS NOT DEREGULATED EQUAL EMPLOYMENT OPPORTUNITIES OR MINORITY OWNERSHIP POLICIES. IN FACT, WE HAVE APPLIED OUR EEO RULES TO NEW MEDIA SERVICES RECENTLY CREATED, SUCH AS LOW POWER TELEVISION AND DIRECT BROADCAST SATELLITES. SECOND, THE ELIMINATION OF NEEDLESS REGULATIONS AND BURDENSOME PAPERWORK REQUIREMENTS BOTH PERMITS ALL BROADCASTERS TO DEVOTE GREATER EFFORTS TO MEETING THE NEEDS OF THEIR AUDIENCES, INCLUDING THE MINORITY AUDIENCE, AND CONSERVES THE RESOURCES OF MINORITY BROADCASTERS WHO ARE OFTEN THE LEAST ABLE TO AFFORD TO SPEND CONSIDERABLE SUMS OF MONEY MEETING UNNECESSARY GOVERNMENT REGULATIONS, OFTEN THROUGH COSTLY LEGAL COUNSEL. FINALLY, THE RADIO

DEREGULATION PROCEEDING WAS BASED UPON A RECORD INDICATING THAT RADIO OUTLETS, AT LEAST IN MAJOR MARKETS, HAVE BECOME SO PLENTIFUL THAT IT IS IN THE ECOMONIC INTEREST OF LICENSEES TO SPECIALIZE IN THE AREA OF PROGRAMMING. FOR THE FIRST TIME, OUR RULES NOW PERMIT RADIO STATIONS TO "NARROWCAST," THAT IS, TO TARGET MUCH OF THEIR PROGRAMMING TO A SPECIFIC MINORITY GROUP IN THE COMMUNITY. ANOTHER DEREGULATORY MEASURE THAT UNBDOUBTEDLY BENEFITS MINORITY ENTREPRENEURS IS THE COMMISSION'S REDUCTION OF ITS FINANCIAL QUALIFICATION RULE. THE REQUIREMENT THAT AN APPLICANT FOR A BROADCAST STATION POSSESS FUNDS TO OPERATE WITHOUT REVENUES FOR TWELVE MONTHS WAS REDUCED TO THREE MONTHS. ALSO IN THIS REGARD, THE COMMISSION'S SUBSTITUTION OF ITS DETAILED FINANCIAL QUALIFICATION RULE WITH A SIMPLE CERTIFICATION REQUIREMENT GREATLY REDUCES PAPERWORK BURDENS ON ALL APPLICANTS.

HAVING CHRONICLED SEVERAL OF THE MORE SIGNIFICANT COMMISSION EFFORTS IN THE MINORITY EMPLOYMENT AND OWNERSHIP AREAS I WOULD LIKE TO TURN TO SPECIFIC FEATURES OF THE BILLS BEING CONSIDERED TODAY.

PROVIDING THAT MY READING OF SECTION 4 OF H.R. 1155 IS CORRECT, I QUESTION THAT ITS ENACTMENT IS NECESSARY TO ACHIEVE THE OBJECTIVE SOUGHT. ADDITIONALLY, WHILE I RECOGNIZE THAT SUCH QUESTIONS ULTIMATELY MUST BE RESOLVED BY THE COURTS, I BELIEVE THAT SECTION 4 MAY RAISE VERY SERIOUS CONSTITUTIONAL QUESTIONS. SPECIFICALLY, IT APPEARS THIS SECTION WOULD CREATE TWO CLASSES OF APPLICANTS FOR NEW FACILITIES--THOSE THAT ARE ELIGIBLE (MINORITIES) AND THOSE THAT ARE NOT (ALL OTHERS, PRESUMABLY). "INELIGIBLE" (OR NON-MINORITY) APPLICANTS FOR NEW FACILITIES WOULD BE PERMITTED TO RECEIVE CONSIDERATION ONLY IN THE NARROWEST OF CIRCUMSTANCES, INCLUDING WHERE THERE IS AN ABSENSE OF MINORITY APPLICATIONS.

IN CONTRAST, I MUST POINT OUT THAT THE COMMISSION GENERALLY HAS NOT SET FORTH ELIGIBILITY STANDARDS FOR NEW APPLICANTS OTHER THAN FINANCIAL,

CHARACTER, TECHNICAL AND CITIZENSHIP CRITERIA. THE ONLY INSTANCE THAT COMES TO MIND IN WHICH THE MINORITY OWNERSHIP OR CONTROL OF AN APPLICANT WAS ONE OF THE CRITERIA FOR ELIGIBILITY WAS IN THE CASE OF AM APPLICATIONS IN LARGE MARKETS FILED AS A RESULT OF OUR MAKING ADDITIONAL SPECTRUM AVAILABLE IN THE CLEAR CHANNEL PROCEEDING DESCRIBED ABOVE. I THINK THIS IS A MUCH NARROWER APPLICATION OF AN ELIGIBLITY CRITERION DESIGNED TO FULFILL A SPECIFIC OBJECTIVE, FAVORING ADDITIONAL MINORITY-OWNED AM STATIONS IN MAJOR MARKETS WHERE MINORITIES RESIDE IN LARGE NUMBERS. SECTION 4 SEEMS TO IMPOSE A NATIONAL STANDARD TANTAMOUNT TO "NON-MINORITIES NEED NOT APPLY." IN NO OTHER INSTANCE HAS RACIAL BACKGROUND BEEN A CRITERION FOR ELIGIBILITY TO APPLY FOR A LICENSE. AS FOR ENSURING THAT MINORITIES ARE ELIGIBLE TO BE GRANTED LICENSES OR CONSTRUCTION PERMITS, IT IS INCONCEIVABLE THE COMMISSION WOULD EVER DENY ELIGIBILITY FOR THE GRANT OF A LICENSE TO AN OTHERWISE QUALIFIED MINORITY APPLICANT ON THE BASIS OF RACE. IN FACT, AS YOU KNOW, UNDER OUR CURRENT COMPARATIVE POLICY, OTHERWISE QUALIFIED MINORITY APPLICANTS ARE ACCORDED A SPECIFIC PREFERENCE IN COMPARATIVE HEARINGS.

ALSO IN THIS REGARD, I NOTE THAT THE LEGISLATION UNDER DISCUSSION APPEARS NOT TO DISTINGUISH BETWEEN BROADCAST AND COMMON CARRIER SERVICES WIT RESPECT TO MINORITY PREFERENCES IN PROCEEDINGS IN WHICH SEVERAL APPLICANTS ARE COMPETING FOR ONE AVAILABLE LICENSE. THE COMMISSION HAS FOUND THE POLICIES FAVORING MINORITY PREFERENCES IN THE AWARD OF LICENSES IN THE MASS MEDIA SERVICES TO BE INAPPLICABLE TO THE COMMON CARRIER SERVICES, PRIMARILY BECAUSE COMMON CARRIER LICENSEES MAY NOT CONTROL PROGRAM CONTENT. THUS, THE PRESUMED NEXUS BETWEEN OWNERSHIP AND PROGRAMMING, ONE OF THE PRINCIPAL BASES FOR THE COMMISSION'S EEO JURISDICTION, DOES NOT EXIST IN THE COMMON CARRIER SERVICES. INDEED, THE CONGRESS IN THE COMMUNICATIONS AMENDMENTS ACT OF 1982, THE LEGISLATION THAT AUTHORIZED LOTTERIES, SPECIFICALLY DECIDED AGAINST

INCLUDING MINORITY PREFERENCES FOR COMMON CARRIER SERVICES. WHILE WE REMAIN COMMITTED TO FOSTERING MINORITY OWNERSHIP OF ALL TELECOMMUNICATIONS SERVICES, AND, OF COURSE, WILL CARRY OUT ANY PREFERENCE SYSTEM THE CONGRESS IMPOSES, I REITERATE THAT THE COMMISSION FINDS NO BASIS FOR GRANTING MINORITY PREFERENCES IN COMMON CARRIER LICENSING.

AS PREVIOUSLY SET FORTH IN DETAIL, THE COMMISSION HAS BEEN ACTIVE IN ATTEMPTING THROUGH A NUMBER OF MEASURES TO LOWER THE PRINCIPAL OBSTACLE TO MINORITY ENTRY INTO THE FIELD OF TELECOMMUNICATIONS - THE FORMATION OF CAPITAL. ADDITIONALLY, ATTEMPTING TO INCREASE DIVERSITY IN PROGRAMMING, IT HAS CREATED VARIOUS PREFERENCES FOR OTHERWISE QUALIFIED MINORITY APPLICANTS IN BROADCAST COMPARATIVE HEARINGS AND LOTTERIES AND HAS MOVED TO EXPAND DRAMATICALLY THE NUMBER OF MEDIA OUTLETS AVAILABLE FOR ALL ENTREPRENEURS. THE MEASURES HAVE HAD, AND CONTINUE TO HAVE, POSITIVE RESULTS.

I ALSO HAVE CONCERNS WITH RESPECT TO THE DISTRESS SALE PROVISIONS OF H.R. 1155. THE UNDERLYING RATIONALE FOR OUR CURRENT PROHIBITION ON DISTRESS SALES SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING IS THAT SUCH SALES ARE INTENDED TO AVOID THE RESOURCE CONSUMING NATURE OF SUCH PROCEEDINGS WHILE, AT THE SAME TIME, ENHANCING THE OPPORTUNITIES FOR MINORITY OWNERSHIP. THE PROPOSED CHANGES EXTENDING THE TIME FOR DISTRESS SALES COULD ENCOURAGE CURRENT LICENSEES WHOSE LICENSES WERE IN JEOPARDY TO ENGAGE IN THE PROTRACTED AND COSTLY HEARING PROCESS, SAFE IN THE KNOWLEDGE THAT THEY COULD CONTINUE TO OPERATE, AND, IF DISQUALIFIED, STILL REALIZE SOME MEASURE OF COMPENSATION FOR THEIR STATION IF THEY SHOULD LOSE IN THE HEARING. THE CURRENT TIME CONSTRAINTS HAVE THE BENEFICIAL EFFECT OF FORCING LICENSEES TO EVALUATE THEIR CHANCES IN A HEARING BEFORE THIS COSTLY AND LENGTHY PROCEEDING IS COMMENCED. THE CHANGE PROPOSED ACTUALLY COULD RETARD NEW MINORITY OWNERSHIP AS THE HEARING PROCESS GRINDS ON.

OTHER ASPECTS OF SECTION 8 OF H.R. 1155 RAISE SOME CONCERN. AS I HAVE NOTED, OUR EEO EFFORTS ARE PRODUCING POSITIVE RESULTS. FIGURES BOTH FOR OVERALL EMPLOYMENT AND, MORE SIGNIFICANTLY, FOR EMPLOYMENT IN THE UPPER FOUR JOB CATEGORIES BY BROADCASTERS, ALREADY COMPARE WELL WITH SUCH EMPLOYMENT STATISTICS FOR THE WORKFORCE AT LARGE. FOR EXAMPLE, AS I SAID EARLIER, 18 PERCENT OF ALL JOBS NATIONALLY ARE HELD BY MINORITIES, AND 15.3 PERCENT OF ALL JOBS IN THE BROADCAST AREA ARE HELD BY MINORITIES. THUS, I QUESTION WHETHER IT IS NECESSARY TO RAISE THE PROCESSING GUIDELINES TO 80 PERCENT OF PARITY AT THIS TIME. SECOND, THE PROPOSED LEGISLATION SPECIFIES THAT IN ORDER TO BE CONSIDERED IN COMPLIANCE, LICENSEES MUST EMPLOY MINORITY AND FEMALE INDIVIDUALS, BOTH OVERALL AND IN THE UPPER FOUR JOB CATEGORIES, AT A LEVEL OF 80 PERCENT OF PARITY, ON A SKILLS AVAILABLE BASIS. IT ALSO SPECIFIES THAT ALL APPLICATIONS IN WHICH THE APPLICANT DOES NOT EMPLOY (OR PLAN TO EMPLOY) MINORITIES AND FEMALES AT A LEVEL OF 50 PERCENT OF PARITY BOTH OVERALL AND IN THE UPPER FOUR JOB CATEGORIES AND WHOSE MODEL PROGRAM DOES NOT ADEQUATELY JUSTIFY FAILURE TO MEET THE CRITERIA MUST BE DESIGNATED FOR AN EVIDENTIARY HEARING. THE REQUIREMENT THAT LICENSEES FAILING THE 50 PERCENT TEST BE DESIGNATED FOR HEARING SEEMS TO ME TO LIMIT THE COMMISSION'S FLEXIBILITY IN CHOOSING FROM A VARIETY OF REMEDIES SHORT OF EVIDENTIARY HEARING, INCLUDING REPORTING CONDITIONS, HIRING GOALS AND TIMETABLES AND SHORT TERM RENEWALS, THAT HAVE PROVED TO BE EFFECTIVE IN BRINGING LICENSEES INTO COMPLIANCE IN THE PAST. IT IS IMPLICIT IN THE LEGISLATION THAT FAILURE TO EMPLOY MINORITIES AND WOMEN AT THE 80 PERCENT CRITERION LEVEL WOULD CONSTITUTE NONCOMPLIANCE WITH THE COMMUNICATIONS ACT. I NEED NOT POINT OUT THAT WILFULL AND KNOWING VIOLATION ARE CRIMINALLY PUNISHABLE AND SUBJECT A LICENSEE TO REVOCATION. ACCORDINGLY, THE 80 PERCENT IS TANTAMOUNT TO A HIRING QUOTA. WHILE THE COMMISSION APPROVES OF AFFIRMATIVE ACTION TO ENHANCE THE EMPLOYMENT

OPPORTUNITIES OF WOMEN AND MINORITIES (INDEED, OUR EEO RULES REQUIRE AFFIRMATIVE ACTION), IT HAS NEVER SOUGHT TO IMPOSE MANDATORY QUOTAS. NOR DOES THE COMMISSION ALLOW PURELY STATISTICAL INFORMATION ALONE TO RAISE SUBSTANTIAL QUESTIONS OF DISCRIMINATION REQUIRING HEARING. THE REQUIREMENT THAT LICENSEES MAINTAIN AN AFFIRMATIVE ACTION PLAN, OR EEO PROGRAM, IS IN REALITY THE LINCHPIN OF THE COMMISSION'S EEO SCHEME. MY CONCERN WITH IMPOSING PROCESSING GUIDELINES AS "GO, NO GO" RULES IS NOT SO MUCH A LEGAL CONCERN, FOR, AS I HAVE SAID, SUCH ISSUES ULTIMATELY WILL BE DECIDED IN THE COURTS, ANYWAY. I NEED NOT STATE THAT THE COMMISSION WOULD CONFORM TO ANY CONGRESSIONAL MANDATE IN THIS REGARD; NEVERTHELESS I SUGGEST THAT AN EEO ENFORCEMENT PROGRAM BASED PURELY ON NUMBERS MAY NOT BE AS EFFECTIVE AS OUR PRESENT SCHEME.

ADDITIONALLY, I WOULD LIKE TO POINT OUT AN ASPECT OF PROPOSED H.R. 1155 THAT I BELIEVE WOULD BE BOTH LESS STRINGENT AND LESS EFFECTIVE, NOT TO MENTION MORE DIFFICULT TO ADMINISTER, THAN THE COMMISSION'S PRESENT RULES. THE COMMISSION WOULD BE DIRECTED IN THE LEGISLATION TO APPLY THE 80 PERCENT OF PARITY STANDARD TO THE UPPER FOUR JOB CATEGORIES (SEE SECTION 8(E)(2) AND (4)) ON A "SKILLS AVAILABILITY" BASIS. AS I UNDERSTAND SKILLS AVAILABILITY, IT MEANS THAT DATA MUST BE AVAILABLE FOR EACH LABOR FORCE WHERE THERE IS A BROADCAST STATION THAT IS BROKEN DOWN TO SHOW HOW MANY PEOPLE THERE ARE WITH SPECIFIC REQUISITE SKILLS. NOT ONLY WOULD THE RELEVANT PERCENTAGE OF SKILLED LABOR IN THE WORKFORCE BE INITIALLY DIFFICULT TO ASCERTAIN, THE COMMISSION'S DETERMINATIONS OF THIS FACTOR UNDOUBTEDLY WOULD GIVE RISE TO DISPUTE, WHICH LIKELY WOULD RESULT IN LENGTHY AND COSTLY PROCEEDINGS. MORE IMPORTANTLY, I BELIEVE, IF WE REQUIRED THAT SKILLED JOB CATEGORIES BE FILLED ONLY IN PROPORTION TO THE EXISTENCE OF WOMEN AND MINORITIES IN THE APPROPRIATE SKILLED LABOR POOL, THIS WOULD RESULT IN ABANDONMENT OF A VALUABLE COMPONENT OF OUR PRESENT EEO PROGRAM. BECAUSE THE COMMISSION'S PROCESSING CRITERION FOR THE

UPPER FOUR JOB CATEGORIES IS BASED UPON 50 PERCENT OF THE TOTAL AVAILABLE LABOR POOL, HUNDREDS AND PERHAPS THOUSANDS OF LICENSEES HAVE INITIATED ON-THE-JOB TRAINING PROGRAMS, BOTH IN CONNECTION WITH LOCAL EDUCATIONAL INSTITUTIONS AND INDEPENDENTLY. I SUBMIT THAT IT IS PRECISELY THIS KIND OF EFFORT -- CREATING AN ENVIRONMENT WHERE MINORITIES PARTICIPATE MEANINGFULLY IN THE DECISION-MAKING PROCESS OF THE TELECOMMUNICATIONS INDUSTRY -- TO WHICH THE LEGISLATION UNDER CONSIDERATION IS PRIMARILY DIRECTED. THE COMMISSION'S CURRENT EEO AGENDA ALREADY IS WORKING TOWARD THAT CRITICAL OBJECTIVE. IT MAY BE TRUE THAT, LOOKING AT NUMBERS ALONE, YOU MIGHT DESIRE MORE OF THE COMMISSION IN THE AREA OF EEO; NEVERTHELESS, I BELIEVE THAT, WERE THE INTRICACIES OF OUR PRESENT EEO MECHANISMS TO BE REVIEWED, THEY WOULD NOT BE FOUND LACKING. FINALLY, I BELIEVE THAT OUR STEADY PROGRESS IN THIS AREA, TO WHICH I ADVERTED EARLIER, GIVES TESTAMENT TO OUR CONTINUING COMMITMENT.

FINALLY, THE PROPOSED LEGISLATION WOULD IMPOSE IDENTICAL EMPLOYMENT GUIDELINES ON BROADCAST, CABLE, EARTH SATELLITE AND COMMON CARRIER SYSTEMS AND UPON NETWORK HEADQUARTERS OPERATIONS. FROM THE VERY BEGINNING OF OUR INVOLVEMENT IN THE EQUAL EMPLOYMENT OPPORTUNITIES AREA, THE COMMISSION HAS RECOGNIZED THAT ITS POLICIES REGARDING THE EMPLOYMENT OF MINORITIES SERVE DUAL PURPOSES. FIRST, THEY GIVE LIFE TO THE NATIONAL POLICY AGAINST EMPLOYMENT DISCRIMINATION IN THE CONTEXT OF TELECOMMUNICATIONS. SECOND, THE EMPLOYMENT OF MINORITIES HAS BEEN VIEWED AS A TOOL TO ASSURE PROGRAMMING BOTH REFLECTIVE OF, AND RESPONSIVE TO THE NEEDS, INTERESTS, AND VIEW POINTS OF THE MINORITY COMMUNITY. INDEED, THE FIRST AMENDMENT PROBABLY PRECLUDES A MORE DIRECT GOVERNMENTAL INVOLVEMENT IN PROGRAM CONTENT, WHETHER OR NOT THIS IS BELIEVED TO BE A DESIRABLE GOAL. THIS SECOND FACTOR SIMPLY IS NOT PRESENT WITH RESPECT TO COMMON CARRIERS, WHO, GENERALLY, MERELY PROVIDE THE MEANS BY WHICH INFORMATION IS TRANSMITTED. FOR THIS REASON AND BECAUSE OF QUESTIONS

CONCERNING ITS JURISDICTION RAISED BY THE NAACP v. FEDERAL POWER COMMISSION CASE, THE COMMISSION HERETOFORE HAS REQUIRED ONLY THE SUBMISSION OF WRITTEN EEO PROGRAMS BY COMMON CARRIERS WITH MORE THAN 16 EMPLOYEES, AND THE FILING OF ANNUAL EMPLOYEMENT REPORTS BY ALL COMMON CARRIERS WITHIN ITS JURISDICTION. OF COURSE, THE COMMISSION WOULD ENFORCE ANY OBLIGATIONS THAT CONGRESS MAY MANDATE. HOWEVER, I WOULD POINT OUT THAT THE CONSIDERATIONS PRESENT WITH RESPECT TO EQUAL EMPLOYMENT OPPORTUNITIES IN BROADCASTING, AND TO AN EXTENT IN CABLE, SIMPLY ARE NOT COMPLETELY PRESENT IN THE COMMON CARRIER AREA. ACCORDINGLY, I WOULD URGE THAT THE DIFFERENT CHARACTERISTICS AND FUNCTIONS OF THE VARIOUS TELECOMMUNICATIONS MEDIA BE GIVEN CONSIDERATION IN THIS REGARD.

I CERTAINLY HAVE NO PROBLEM WITH THE CREATION OF AN ADVISORY COMMITTEE ON MINORITY TELECOMMUNICATIONS DEVELOPMENT. INDEED, IN SEPTEMBER, 1981, WE ESTABLISHED THE ADVISORY COMMITTEE ON ALTERNATIVE FINANCING FOR MINORITY OPPORTUNITIES IN TELECOMMUNICATIONS UNDER THE LEADERSHIP OF COMMISSIONER RIVERA THAT I MENTIONED EARLIER. THIS ADVISORY COMMITTEE, ALTHOUGH TEMPORARY IN DURATION, PREPARED A REPORT THAT WAS ACCEPTED BY THE COMMISSION ON MAY 27, 1982, AND MANY OF WHOSE RECOMMENDATIONS WERE, AS PREVIOUSLY NOTED, ACTED UPON IN DECEMBER, 1982. I AM CERTAIN THAT YOU WOULD AGREE THAT THIS ADVISORY COMMITTEE PERFORMED A VALUABLE SERVICE, AND I AM JUST AS CERTAIN THAT THE PROPOSED ADVISORY COMMITTEE WOULD DO THE SAME.

THE FINAL PROVISION OF H.R. 1155 UPON WHICH I WISH TO COMMENT IS SECTION 8, WHICH WOULD AMEND SECTION 4(K) OF THE COMMUNICATIONS ACT TO REQUIRE A REPORT TO CONGRESS ON MINORITY PARTICIPATION IN TELECOMMUNICATIONS. I THINK YOU WILL FIND THAT THE COMMISSION'S ANNUAL REPORT TO CONGRESS ALREADY INCLUDES THE INFORMATION SOUGHT. OF COURSE, WE WOULD CONTINUE THIS PRACTICE WHETHER OR NOT THE SUBJECT LEGISLATION WERE ENACTED.

Conclusion

In sum, I want to stress that the Commission has been and continues to be active in fostering equal employment opportunities and minority ownership of telecommunications facilities. As the statistics I adverted to earlier demonstrate, our EEO programs are being enforced and are having positive results. We also have taken structural actions to enhance the ability of minorities to own facilities by expanding the number of services and outlets available to applicants. Also to this end, we recently have taken significant measures to remove what I consider to be the principal obstacle to minority ownership of telecomunications facilities--difficulties in the formation of capital. Such measures include expansion in the use of tax certificates and distress sales, in addition to a legislative proposal. While I may have reservations concerning particular aspects of H.R. 1155, I again want to assure one and all that this reflects concern with particulars, not disagreement over direction.

Thank you very much for your attention. I would be happy to answer any questions you might have.

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Report No. 5112 GENERAL ACTION December 3, 1982

FCC ACTS TO INCREASE MINORITY PARTICIPATION IN TELECOMMUNICATIONS FIELD

As a result of the Report of the FCC Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications, the Commission has taken several actions. These include:

-- Issuance of a policy statement on advancement of minority ownership in broadcasting and notice of proposed rulemaking (BC Docket No. 82-797);
-- Adoption of a policy statement on minority ownership of cable television facilities
-- Submission of legislative proposals to Congress, and
-- Signing a memorandum of agreement with the Minority Business Development Agency of the U.S. Department of Commerce.

In September 1981 the Commission established the Advisory Committee, appointed FCC Commissioner Henry Rivera its chairman and charged it with exploring ways to increase sources for financing minority ownership of telecommunications facilities. On May 27, 1982, the Commission formally accepted the report of the Committee and directed the staff to examine the recommendations and report back to the Commission.

The policy statement on broadcast matters addressed the eligibility of limited partnerships for tax certificates and distress sales; tax certificates as creative financing mechanisms and the expedited processing of distress sales.

A limited partnership is a business enterprise composed of: (1) one or more general partners who exercise complete managerial control over the business' affairs and who are personally liable for the partnership debts; and (2) one or more limited partners who invest capital and share in the profits, but do not exercise any managerial control and do not incur any personal debts beyond their initial capital contribution.

The Advisory Committee recommended that the Commission explicitly recognize the unique nature of limited partnerships and indicate that in cases where the general partner is a minority individual and owns more than a 20 percent interest in the broadcasting entity, there exists sufficient minority involvement to justify favorable application of the FCC's tax certificate and distress sale policies.

The Commission said it would adopt this recommendation, thereby explicitly recognizing the significant minority involvement that exists by virtue of a minority general partner's ownership interest and complete control over a station's affairs.

Moreover, the Commission said, by doing this it was increasing minority opportunities by enabling minority entrepreneurs to capitalize their broadcasting ventures by attracting and using the investments of others to a greater extent.

It stressed, however, that in order to avoid "sham" arrangements, it would continue to review such agreements to ensure that complete managerial control over the station's operations is reposed in the minority general partner or partners.

With regard to tax certificates, the Commission said, in accordance with the Advisory Committee's basic recommendations, a further expansion of policy would facilitate initial investments in minority-controlled stations; would contribute toward the stabilization and improvement of their operation once established, and, ultimately, would increase minority ownership of broadcast properties. The use of tax certificates as creative financing tools would facilitate significantly minority entrepreneurs' access to necessary financing under a policy whereby shareholders in a minority controlled broadcasting entity would be eligible for a tax certificate upon the sale of their shares, provided their interest was acquired to assist in the financing of the acquisition of a broadcast facility.

The Commission said these tax certificates would only be available to initial investors who provide "start-up" financing, which allows for the acquisition of the property and those investors who purchase shares within the first year after license issuance, which allows for the stabilization of the entity's capital base. It said to extend availability beyond those shareholders would invite abuse and overprotect minority entrepreneurs against the realities of the market place which all licensees must face.

On distress sales, the Advisory Committee recommended that the Commission delegate authority to the Broadcast Bureau to process and grant distress sale petitions that are consistent with Commission policy. The Commission said there are sufficient precedents now to provide safeguards and standards by which prospective distress sale petitions may be reviewed and processed by FCC staff. Therefore, to facilitate minority ownership and expedite the handling of distress sale petitions, the FCC said it would delegate to the Broadcast Bureau authority to process and grant distress sale petitions which are consistent with Commission policy and do not involve novel questions of fact, law or policy.

Another matter addressed by the Advisory Committee, and one on which the Commission has now issued a rulemaking notice involved creditor rights of the seller of a broadcast station who provides the financing when the station is sold.

Given the current economic conditions of the telecommunications market, the Advisory Committee found that seller financing in station transfers has become a prevalent practice and should be encouraged, particularly since it is obviously one of the ways that minorities can obtain properties. Although a seller-creditor currently may take a security interest in the station's physical assets or stock in the corporate licensee as protection against the purchaser's possible default, the Committee believed that seller-financed transfers would be stimulated if the seller were afforded more protection. Specifically, the Committee recommended that in those cases where the seller provides financing, the seller-creditor's rights be expanded to include the right of reversionary interest in the license.

The Commission noted that the courts, the Communications Act and FCC rules prohibit the seller's maintaining a reversionary interest in the license. It said, however, that it would be appropriate to inquire as to whether these prohibitions could be modified to encourage further the use of this financing tool, particularly where the transaction would enhance minority ownership of the media of mass communications.

Accordingly, the Commission invited comments on the type of security interest that could be retained by a seller-creditor; whether that interest could or should include a reversionary interest in the license itself and the legal process that might be required before the creditor could exercise its reversionary interest.

In its policy statement on minority ownership of cable television facilities, the Commission encouraged such ownership and adopted a recommendation of the Advisory Committee that the Commission begin issuing tax certificates for sales of cable television properties to minority purchasers.

The Commission said that henceforth it would consider requests for tax certificates from owners of cable television systems who have sold their interests to minority-controlled entities.

By using its tax certificate authority in this manner, the Commission said, it could assist minority entrepreneurs in becoming owners of cable television systems and, thus, enhance the presentation of minority viewpoints in programing on cable television systems.

The Commission's legislative recommendations to be sent to Congress contain suggested changes to the Internal Revenue Code necessary to implement two of the changes suggested by the Committee.

The first is the recommendation that the tax certificate policy apply to nonbroadcast properties. Because Section 1071 of the Internal Revenue Code applies only to "radio broadcasting stations" and ancillary facilities, this section must be amended before the Commission can implement this recommendation.

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The second legislative recommendation would amend the investment tax credit provision of the Internal Revenue Code to raise the amount of used equipment that a taxpayer could count in computing an investment credit.

The investment tax credit, first enacted in 1962 to encourage investment in equipment and machinery, allows taxpayers to reduce their income tax liability by constructing or purchasing equipment, machinery or other tangible, depreciable, "qualified" property. A direct dollar-for-dollar offset against tax liability, the investment credit also helps reduce the cost of productive assets and makes funds available for other purposes.

The current restrictive ceiling on used property is $125,000 which amounts to a maximum credit of $12,500. The recommendation would raise the amount to $5 million which would allow a maximum credit of $500,000. This recommendation, if implemented, would make the investment credit a much more attractive and effective financing device for minority entrepreneurs to use in attracting investment capital to purchase existing telecommunications facilities.

The memorandum of understanding between the FCC and the Minority Business Development Agency of the Department of Commerce (MBDA) formalized a cooperative effort to provide management assistance to minority telecommunications entrepreneurs.

Both agencies pledged to use their resources to participate in MBDA-sponsored minority business development programs and, where applicable, pool information useful to minority businesses and entrepreneurs.

Action by the Commission December 2, 1982, by Policy Statement and Notice of Proposed Rulemaking (FCC 82-523); Statement of Policy (82-524); Memorandum Agreement (Commissioners Fowler (Chairman), Quello, Fogarty, Jones, Dawson, Rivera and Sharp); and Legislative Proposals (Commissioners Fowler (Chairman), Quello, Fogarty, Jones, Rivera and Sharp with Commissioner Dawson concurring in the result). Chairman Fowler and Commissioners Rivera and Dawson issuing separate statements.

- FCC -

For more information contact Paulette Freeman at (202) 254-7674.

STATEMENT ON RECOMMENDATIONS OF ADVISORY COMMITTEE ON MINORITY OWNERSHIP

Mark S. Fowler, Chairman, FCC

December 2, 1982

When I became Chairman, one of my most important goals was to create more opportunities for minorities in telecommunications. The more I studied the problem, the more I became convinced that the three major road blocks to more minority ownership are money, money and money. Today's actions aim squarely at the problem of financing minority opportunities. The are the result of hard work by the Advisory Committee, headed ably by my colleague, Henry Rivera.

More than anything, today's actions take a big step in the right direction in fulfilling the goal of full and fair entry into telecommunications for all Americans. By focusing on capital formation, they identify the chief problem and provide the start of a solution. No set of actions, I realize, can bring sudden equality of opportunity to the telecommunications marketplace. But by aiding entry for the minority entrepreneur, we aim our efforts in the right direction.

As President Reagan has said, the best hope for a strong economic future rests with a healthy, growing private sector. And the private sector does best when all have opportunities to enter it.

STATEMENT

OF

COMMISSIONER HENRY M. RIVERA

Re: Legislative Proposals

Today we take important new steps to facilitate minority acquisition of telecommunications properties. These measures are points on a continuum of FCC efforts to broaden ownership of communications facilities. 1/

Although our actions center on the mass media services, we also for the first time have proposed legislative measures to help diversify ownership of all telecommunications services within the Commission's domain. Of the actions we take today, these proposed legislative revisions could well be the most significant, at least from a long term policy perspective.

As early as 1978, this Commission stated its desire to improve minority ownership of common carrier and other non-broadcast facilities, 2/ noting that such improvement would require the efforts of Congress, the private sector and other governmental agencies. The current Advisory Committee's Final Report expressly found that encouraging minority entry into all fields of telecommunications would enhance the public interest, 3/ and accordingly recommended that the FCC's tax certificate policies be extended to new non-media areas. This recommendation is readily understandable when one considers the vital role the telecommunications industries occupy in our Nation's economic, social and political arenas.

If the proposed amendment to section 1071 is enacted, the Commission could promulgate a policy to further diversification of ownership of private radio and common carrier facilities, premised on the view that diversified ownership of communications facilities is itself a valid Commission objective.

This agency's experience with the current section 1071 suggests that the proposed amendment would have a negligible effect on the public fisc but that its impact in promoting FCC policies could be significant. 4/

It is my sincere hope that the Congress will see fit to act favorably upon the legislative proposals we forward today.

1/ See Policy Statement Regarding the Advancement of Minority Ownership in Broadcasting, ___ FCC 2d ___ (adopted December 2, 1982); Minority Ownership of Broadcasting Facilities, 68 FCC 2d 797 (1978).

2/ Minority Ownership of Broadcasting Facilities, supra, 68 FCC 2d at 984.

3/ Final Report at 7.

4/ For instance, since 1978, the Commission has issued approximately 55 tax certificates in furtherance of its minority ownership policy. The stations acquired as a result represent more than thirty percent of all minority-owned commercial broadcast stations. Thus, the tax certificate program has been singularly effective in promoting this fundamental FCC objective.

Re: Legislative Recommendations of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications

CONCURRING STATEMENT OF COMMISSIONER

MIMI WEYFORTH DAWSON

Lest any confusion result from the attachment of legislative "proposals" to a transmittal letter which eschews making any "affirmative [legislative] recommendation," let me reiterate my belief that the "proposals" are not intended to be Commission requests for legislation. Rather, the Commission's action today merely transmits the legislative recommendations of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications and notes some of the substantial problems regarding the adoption of the proposals.

I would be particularly disturbed if the transmittal were misperceived as an FCC request for expansion of its tax certificate policy into nonbroadcast services because I feel strongly that the Commission should not support such legislation. First, our minority actions in the broadcast area have always been predicated on a communications-related purpose: the belief that increased minority participation fosters the presentation of diverse viewpoints. Indeed, it is this communications purpose which has made the Commission's EEO-related policies unique among federal regulatory agencies. E.g., National Association for the Advancement of Colored People v. Federal Power Commission, 425 U.S. 662, 670 n. 7 (1976). Because

common carriers by definition do not control content, the extension of our tax certificate policy simply could not serve the communications purpose which has underlain our minority policies. It may be that such a policy will nevertheless serve a social goal which Congress wishes to foster, but I do not think it is the province of this Commission to recommend the adoption of such general social goals absent some communications purpose. This is particularly true since the evaluation of the merits of the proposed legislation rests on issues of economic policy about which this Commission has no special knowledge.

I am also fearful that implicit congressional approval of a policy of fostering minority ownership of nonbroadcast telecommunications facilities would necessarily be translated into a system of preferences in nonbroadcast hearings such as those now beginning in the cellular radio area. It seems to me that such a consequence would be difficult to avoid in light of a congressionally established policy.

Where the nexus to communications policy exists, I support making efforts to foster minority ownership. In my view, however, the Commission's authority to influence national social goals is limited quite properly to issues of communications policy. I fear that we will lessen the Commission's ability to affect legislation which is properly within its area of expertise if we engage in efforts to further goals which bear no relationship to the Commission's special mandate.

Mrs. COLLINS. Mr. Wheeler.

STATEMENT OF THOMAS E. WHEELER

Mr. WHEELER. Thank you, Mrs. Collins.

Let me begin by just summarizing where we are right now in the cable television business and then go on to perhaps what we can do today and tomorrow to improve on that.

Minority employment in the cable business, as you have just heard Mr. McKinney say, is increasing. Of the approximately 12,500 new hires in the cable industry last year, 19 percent were minorities. And, as you heard Mr. McKinney say, the total minority employment is up to 15.3 percent.

I think what is significant is that while this represents a 9 percent across-the-board increase in minority employment over the previous year, it represents a 29-percent increase in the upper four job categories—in the executive positions within the cable industry—and it exceeds the minority employment not only in terms of a national average but also in comparison with sister businesses such as broadcasting.

On the issue of minority employment, we now have 23 minority-owned cable companies—12 black, 5 Hispanic, and 6 native American

I would like to endorse what Mr. Marshall said previously, and that is that we need more minority ownership, just pure and simple. The real question is how we accomplish that; how do we go beyond this level of employment and this level of ownership. And in that regard, I would like to suggest some specific approaches.

First of all, all cable entrepreneurs and their consumers suffer at the hands of local governments who engage, in many instances, in practices which discourage investment and discourage expanded services rather than encourage it.

I would like to identify myself with the comments of one of the previous witnesses, that I think there should be, and we think there should be, a maintenance of city control over the regulation of cable television; but that that control should be out in the open and should be based upon general standards.

Let me give you an example. It is hard enough right now to raise money for any business, let alone the millions and tens of millions and hundreds of millions of dollars required to build cable television systems. But how do you go and raise money, whether you are a major cable television company or a minority entrepreneur or anyone else, if you have got to go to the bank and say to them, "I have no assurance that if I do a good job I will have the right to continue to do a good job, and that I will have the ability to continue to grow so you can get a return on your investment in me.

So what the cable legislation which is now circulating in this House suggests is that there ought to be an open process whereby city governments make a decision in the open about renewal of franchises and do that on standards that encourage operators to provide better service.

Another example is the question of hidden taxes. Why should a city be able to hide taxes in the rate that cable subscribers pay?

Isn't this one of the most regressive forms of taxation that hits upon those least able to pay it with the hardest impact?

To that extent the cable legislation puts a Federal limit on what that hidden tax is and also says the consumer should have the right to know, so he or she as a local citizen or local voter can express themselves at the polls.

Also the question involves where should rates be decided? Should they be decided in the political marketplace or decided in the consumer marketplace. Those are the kinds of issues that I think help consumers and help all entrepreneurs.

Let's go one step beyond that. I think there are other levels of government involvement, particularly in the Federal legislative area, which can happen and should happen. Specifically we support the approach taken in your bill, Mrs. Collins, H.R.1155, to encourage minority employment, and we think that is an appropriate kind of issue which ought to be included in the cable legislation.

In addition, we support the bill, H.R. 2331, to codify the tax credits and tax certificates to encourage minority ownership.

There was another issue that was raised this morning and that was the issue of access to the cable systems for various programers, whether they be public interest groups getting on public access channels or whether they be business entities trying to lease channels.

The draft legislation now circulating provides that there will be public access and provides that authority will remain at the local level. It establishes a Federal policy for a commercial channel leasing program whereby programers can get on to cable systems via lease.

We think those kinds of activities further encourage minority program production and minority expression within the community.

Finally, I would like to suggest a couple of activities that we are ourselves engaged in at the association, and if you will, have a bit of a commercial. On October 26 through 28, here in Washington, we will be holding our second minority business development symposium, trying to bring together minority individuals who want to get involved in the cable business with the people who have done it before and say, OK, what does it take to do it, and how can we help you do it?

We have also published a directory of minority contractors, urging the cable industry to deal with minority contractors on everything from paperclips to the wire that they string. And we also have a directory of education and training programs, because so often people say OK, I want to get into cable, how do I get into cable, how do I get trained.

We are trying to provide that kind of entry vehicle.

I guess the biggest thing I would suggest is that there is a need for a coordinated program from the Congress to encourage minority involvement and minority employment in cable television beyond that which already exists today.

I believe that the cable legislation which is now circulating will make investment easier for all who seek to get into it and will encourage better consumer service.

In addition, I believe the cable will be an excellent vehicle for legislation to encourage minority employment and ownership.

I would pledge to you today, Mrs. Collins and to Mr. Bates, and the committee in general, that the cable industry is committed to making those kinds of goals happen and to seeing that there is opportunity, both in employment and in ownership, and that the appropriate steps to encourage that opportunity are taken at the Federal and local levels.

Thank you.

Mrs. COLLINS. Thank you very much.

Let me say that I am very pleased that you have mentioned that. In fact you said that you endorse the concept of EEO that I have in my legislation, and I would like to turn then to a question to Mr. Krasnow. Can you support the concept of EEO such as we are talking about in broadcast deregulation?

Mr. KRASNOW. The NAB supports affirmative action and supports the policies at the FCC. We do not believe that the EEO processing guidelines as proposed in your bill should be codified into law. There is a distinction, as we see it, between mandating equality of opportunity, which is in the form of affirmative action programs, which we support, and laws that mandate equality of result, in the form of processing guidelines on the number of employees.

So we would support affirmative action plans. We wouldn't support what we think might be arbitrary statistical showings which don't necessarily——

Mrs. COLLINS. Will you support the concept of EEO in broadcast deregulation?

Mr. KRASNOW. As we see it, deregulation should be a clean bill in terms of saying to the FCC that if a broadcaster does not comply with the rules and regulation of the FCC, including EEO, they would keep changing——

Mrs. COLLINS. Aren't you telling us that it is good policy and so forth, yet are you telling us it is not a good idea to have EEO provisions in the broadcast deregulation bill?

Mr. KRASNOW. We would rather have a specific obligation to comply with the public interest, including FCC rules and regulation, which include——

Mrs. COLLINS. Don't you have a specific obligation to see to it that some EEO language—be included in such legislation? Are you saying that NAB simply refuses to even discuss EEO language?

Mr. KRASNOW. Oh, no, let's clarify that.

Mrs. COLLINS. Let me make you aware of something. When my bill was introduced there was an absolute and total refusal of NAB to consider any of the EEO language that was in it. That tells me that you don't have even the notion of the fairness of the concept.

We are not just talking about my bill though. We are talking about broadcast deregulation. And even under deregulation, you are telling me that you don't think there is some fairness in EEO language? Is that right?

Mr. KRASNOW. I am saying that under deregulation broadcasters should continue to have an affirmative action obligation.

Mrs. COLLINS. So when we are talking about the concept, your answer is no.

Mr. KRASNOW. The NAB addressed itself to the particular provisions in your bill, which would codify the processing guidelines——

Mrs. COLLINS. We are not talking about my bill.

Mr. KRASNOW. What we intend to do is to go back to our executive committee to see where there might be some room for language in the bill. At the present time, we support the provisions of the Senate bill that was unanimously passed in February——

Mrs. COLLINS. The Senate bill does not have EEO language in it, so you are supporting that bill wholeheartedly.

Suppose we were to put an amendment in the legislation or to write a bill that would put in full language on EEO, using the Senate bill as a skeleton, would you believe to support that kind of legislation?

Mr. KRASNOW. Depending on what the language would be.

Mrs. COLLINS. I don't want to take a look at the Senate bill. That is a lousy bill.

Mr. KRASNOW. If the Senate bill were enacted it would make sure that the broadcaster who did not comply with the EEO would lose their license. The Senate bill would make sure a citizen group that felt the broadcaster wasn't providing quality programing could file a petition to deny.

I think there are safeguards in the Senate bill.

Mrs. COLLINS. I salute Mr. Wheeler and the National Cable Television Association for the fact that they think that the EEO language in my bill and other EEO language that we have talked about is effective and it does have a place in cable. I cannot understand, since they are both media, why NAB has taken such a hard line on this particular concept, the concept itself. If it is OK with cable it seems to me it should be OK with the broadcasters.

I see some difference there that I find very, very disturbing. There are about 10,000 broadcast licenses and if we abolish the comparative renewal challenge process, how can we meaningfully increase minority ownership of existing broadcast properties, separate, and apart from the distress sales and tax certificates, Mr. Krasnow.

Mr. KRASNOW. I think the comparative renewal process and minority ownership are two different issues. I know of no instances where the comparative renewal process has been used in encouraging minority ownership. I mentioned earlier there are ways to encourage minority ownership including provisions in your bill which NAB supports on tax certificates and investment credits. I mentioned earlier that the lottery mechanism, which now is going to be deciding how low-power television licenses, MDS, cellular radio, are going to be awarded at random, thusly hurting minorities because they don't get the preference that is accorded in the law in comparative hearings; so I think you should focus on comparative hearings for new applicants as a way of increasing minority ownership.

Comparative renewals have never been a way for minorities to get ownership of stations.

Mrs. COLLINS. Hasn't it been a way of highlighting the fact that minorities have not had the kind of ownership rights even that they should have?

Mr. KRASNOW. I think the petition to deny process highlights exactly that.

Mrs. COLLINS. It is leverage for minorities, is it not?

Mr. KRASNOW. The petition to deny is exactly that, but not the comparative renewal process, which has been used basically by majority business groups to apply to get a valuable license.

The petition to deny process has been used effectively by minorities and other groups to get broadcasters to change programing.

Mrs. COLLINS. Let's look at a city like Chicago where we have a city with more than 50 percent minority based on the 1980 census.

Clearly broadcasters have a responsibility to meet the programing needs of that segment of the community. Would you agree to that?

Mr. KRASNOW. Yes.

Mrs. COLLINS. Now we are talking about repealing the challenge, if it felt that station was not filling those minority needs and interests.

We are going to replace that with a system known as quantification which I am very interested in, as you know, that this committee is working on which will require the broadcasters to provide certain amounts of programing in certain categories.

How can we assure, I mean really assure that we can increase minority programing in going that approach?

Mr. KRASNOW. I think the quantification approach is the wrong way to increase minority programing. It is the wrong way to get better programing service from broadcasters.

The FCC said, and the court of appeals agrees, that a quantification approach has no impact on the quality of programing. All it is is a numbers game.

Mrs. COLLINS. Is that your personal opinion or the official opinion of the NAB?

Mr. KRASNOW. The official opinion of the NAB is that we have problems from the first amendment point of with view of the Government dictating numbers and percentages of programing. Also, it just doesn't work.

It doesn't get at the quality of the programing or the context of programing. The subcommittee had a hearing which featured the bounces of a Dodge City, Kans., radio station—they would do well under a quantification standard since the station broadcast high percentages of nonentertainment public affairs and news programs.

Mrs. COLLINS. We are talking about minority programing. Let's back up a little bit.

We talked about quantification. You don't particularly care for quantification, right?

Mr. KRASNOW. Exactly.

Mrs. COLLINS. Can you tell me how we are going to go about getting more minority participation, programing for example, without quantification?

Mr. KRASNOW. I think there are a variety of ways.

Once you get into mandating specific programing——

Mrs. COLLINS. Tell me some of the variety of ways you are talking about.

Mr. KRASNOW. Let's take two areas. One area deals with ownership. One might look to tax certificates, a concept the NAB suggested to the FCC and they adopted; the other is distress sales; another might be investment tax credits which we support in your bill and

Congressman Leland's bill, and another is the role of the private sector in making sure the minorities get the funds and knowhow to apply for these facilities, something we have done through BROADCAP that was mentioned earlier.

The other is to make sure that broadcasters continue to have an affirmative obligation to hire minorities and women.

Mrs. COLLINS. We have found historically that even though there have been affirmative obligations throughout this Nation that, without having some EEO language, without agreement of the concept of EEO, it has not been done.

Mr. KRASNOW. We feel it is something worth revisiting.

Mrs. COLLINS. How many times do you have to revisit it? Haven't we done it for hundreds of years?

Mr. KRASNOW. Basically we have supported EEO as far as affirmative action. We have opposed the approach in the bill that has to do with the processing guidelines as does the FCC in this regard also.

Mrs. COLLINS. Mr. Wheeler, I am afraid I am losing my voice here.

Can you tell us what activity you have taken, for example?

You have met with me; you met with Congressman Leland; tell us how you have gone about creating the climate for the EEO language that you are talking about cable should have and the result that you think you are going to get from that, which I happen to think is very possible.

Mr. WHEELER. I think the first is a program which our board of directors set up involving the minority affairs committee of NCTA and directing them to engage in specific programs such as the business and development symposium I told you about.

But, specifically, we have been discussing with the board of directors, and with the cable operators of America this kind of a concept.

The one thing that maybe would be of interest that is not generally known is, even before this proposal came up, we had a situation where S. 66, the cable bill in the Senate, through a legislative drafting error—let me say with no malice aforethought—struck by accident the EEO authority of city governments which we caught and asked them to put back in because that is the kind of legitimate authority local governments ought to have.

What we have been trying to do since then is to work with you and Mr. Leland and other affected Members of the Congress to determine just exactly how we can take the ideas in H.R. 1155 and put them into the cable deregulation legislation insofar as cable is concerned and make it law.

Also, I would add, we would love to see the tax credit and distress sale incorporated in the legislation, but that brings in the Ways and Means Committee and creates a whole new hassle, but we are working in Ways and Means to try and secure passage of that.

Mrs. COLLINS. Thank you.

Mr. Bates.

Mr. BATES. Thank you.

Just a few quick questions and I am going to have to go.

I appreciate the panel speaking to us and presenting their point of view. Primarily based on your comments, I would like to address some questions to Mr. Krasnow and Mr. McKinney.

I want to preface these questions by stating that I don't want to embarrass you or demean you in any way or take advantage of the position that I have here, but I really think that we need to get down to the fundamental issue, and what we are going to do about it, and how you perceive it and the impression that I have is that you are powerful, that you are arrogant, that you don't recognize a problem and that you don't see any need to do anything about it and that you really don't care if you have my support and that of the members and that you have your votes for deregulation and you will just go on merrily the way things have been.

Now, I would like to ask some specific questions that have to do with values more than facts and figures.

Do you perceive, both of you, a problem, a problem of racial discrimination in the broadcast industry in this country at this time?

Mrs. COLLINS. I wonder if Mr. Krasnow will answer that?

Mr. KRASNOW. I think that broadcasters, as all businesses, have a way to go in terms of being more sensitive in their programing practices.

Mr. BATES. We all do. I have a long way to go, but my question directly, and I really want a direct answer, is, do you perceive racial discrimination in the broadcast industry in this country at this time?

I am hoping for a yes or no, but I will take some modified——

Mr. KRASNOW. I would say no and it is based on my——

Mr. BATES. No?

Mr. KRASNOW. Based on my perceptions. My answer to that it has to be based on what I see and what I hear as the chief lawyer for the National Association of Broadcasters. Based on the calls we get from our members, they are looking for ways of complying with the FCC's affirmative action guidelines, and I don't see overt discrimination; there may be discrimination there, but I don't see——

Mr. BATES. How about subtle and sophisticated discrimination?

Mr. KRASNOW. No response.

Mrs. COLLINS. Let the record show the—is your answer no?

Mr. KRASNOW. No.

Mrs. COLLINS. OK, just for the record.

Mr. BATES. Mr. McKinney.

Mr. MCKINNEY. If you disregard the severe cases that we certainly take under enforcement at the FCC and if you recognize there are pockets of discrimination, yes, within the broadcasting industry, I think overall the record is good.

It is a kind of a question you almost can't give a yes or no to, but overall the record has improved each year. Employment has gone up every year across the board; employment has gone up every year in the top four job categories every year. From that standpoint, I believe the broadcasters are trying to do a better and better job.

Mr. BATES. I would hope that is the case, but I just think that we start from a fundamentally different set of perceptions and values that I think there is blatant discrimination; that it is obvious on

the surface; that it is reality and that it should be obvious to everybody.

You obviously have a totally different view of this problem.

Second of all, I think it is basically a question of power. Who has power and how they are going to wield it.

Now, what little power I have as a Congressman will be used to try and enforce through laws, through quotas, through any means possible, the changing of what I perceive that problem to be.

I am just letting you know where I am coming from and if you want to deal with me in all these pieces of legislation involved in telecommunications we have to, you know, resolve this other problem first.

The other problem which I think is less arguable, but I would be interested in your perception of it, is the programing, the roles, the projection of minorities over television now—and I hope you heard some earlier testimony, but if you didn't, it alluded to the fact that either minorities are conspicuous by their absence or they are portrayed in unfavorable, generally in an unfavorable or violent or kind of not the model role that there are in the broader segment of minority society.

Would you agree with that or would you disagree with that? That is a question for all three of you, I think, on this one.

Mr. KRASNOW. I think the testimony earlier has shown that there is an undue amount of stereotyping.

The difficulties that I have as a lawyer representing the trade association of broadcasters is what is an effective way of improving the situation?

One way would—it is a way that we would oppose—is to have the FCC somehow—it would be a very difficult task—somehow review program by program, character by character, situation by situation, programing, and decide whether it involved some stereotyping.

We think that such an approach flies in the face of basic first amendment values.

Another would be to encourage minority ownership and minority employment.

That is an area NAB supports, although I think that the record on this point is somewhat distorted. One might get the impression because we oppose certain provisions of Congresswoman Collins' bill, that the industry is not doing a great deal.

I think that as Mr. Wheeler has shown, NCTA has a concern and has a great deal of action in that area. I think that he would also note that the broadcasters took the leadership role in the early seventies, formed a fund that—I am proud to be director and treasurer of that fund, BROADCAP—of close to $11 million.

Broadcasters contributed to this fund to be sure there would be an increase in minority ownership. We have an employment clearinghouse. We conducted conferences and seminars and we have been very active in Commissioner Rivera's advisory committee. There are a whole series of activities that NAB, as an institution and an association, has engaged in.

We have concerns when it gets to specific programing limitations or getting the FCC--which, after all, is a politically appointed

body—into second-guessing the business practices and programing judgments of broadcasters.

To return to the theme of the legislation, a petition to deny is a very effective tool for local groups to express concern when they are dissatisfied with programing of a local station.

Mr. BATES. Thank you.

Mr. McKinney.

Mr. MCKINNEY. If you will allow me to express a personal opinion on your question, I would like to do that and disassociate myself from the FCC because obviously the FCC has to say we don't deal in programing.

I don't believe minorities are treated very fairly in the portrayals at all. I get very concerned also when I see portrayals of Government officials and Congressmen.

I watched "Capitol" one day, the new soap opera. I don't like the way Washingtonians are portrayed. I don't think television in general does a very good job of portraying real life.

There is probably a reason for that. Real life is probably dull in comparison to what it is they want to put on the air to grab your interest and get you to watch.

But I think the answer to your question is a clear yes, I don't think minorities are portrayed accurately on television and I don't think they are portrayed in a very desirable frame either.

Now, relating back to my FCC position, I have to tell you that we will always strenuously attempt not to let our personal opinions ever intervene in the decisions that we have to make.

Our statute is very clear, Congress has told us to stay out of programing, and I think we all certainly intend to do that.

Mr. BATES. Mr. Wheeler.

Mr. WHEELER. Mr. Bates, in terms of the general thrust of your question, I think that racial discrimination is a historical plague——

Mrs. COLLINS. Would you move the mike closer to you, please?

Mr. WHEELER [continuing]. That it is imperative that we overcome it, both through individual action and law.

To that extent—and specifically your question goes to programing—one of the ways of doing that in programing is to create outlets.

You have a lot of people who talk about producing programs, but they have nobody to show it. There are two ways that cable can offer outlets and that the legislation we are talking about encourages creation of outlets.

One is through public educational and Government access programs which are specifically codified and specific authority delegated to cities by this bill, and the second is through a channel leasing program so if a group of minority programers or whomever wants to get together a set of programs that there is a Federal policy insofar as their ability to lease from cable operators channel capacity to show those programs.

Mr. BATES. Thank you.

Mrs. COLLINS. Thank you. Just a couple of final questions, if I may.

Mr. Krasnow, we were talking a little bit ago about the comparative renewal process. I understand there are only four or five sta-

tions that have been won by minorities in the comparative renewal process. That is just one issue, an aside.

But right now I understand that there are 13 stations RKO owned that are up for comparative renewal at this time and I believe also that there are black companies trying to get these stations.

I am almost positive one of the reasons they are trying to get one in particular is that they have proof there has been a lack of sensitivity to the minority community and that these stations have not served those communities well.

Don't you think it is interesting that the move to repeal comparative renewal comes at a time when minority companies are getting very interested in this vehicle at a time when we are challenging the renewal of those 13 RKO stations?

Mr. KRASNOW. It is a historical fact that the movement to get rid of comparative renewals started in the 1970's. In 1976 the FCC came to the Congress and said the comparative renewal process just doesn't work and they asked the Congress to get rid of it.

It is a fact that the RKO challenge came in recent years, whereas the comparative renewal question is something that was around for a long time. The FCC, since the mid-seventies has said that it just doesn't work or make any sense; we agree.

Mrs. COLLINS. You agree.

Not too long ago, our subcommittee chairman, Mr. Tim Wirth, asked for NAB to encourage its membership to provide us with certain information on the amount of programing ads so we could develop deregulation. NAB has been dragging its feet on that.

Do you think we will get that information? In fact, did you not advise your broadcasters in your association to ignore the request?

Mr. KRASNOW. No, we did not advise our broadcasters to ignore the request. The wording of the letter was such it made it appear as if broadcasters didn't comply there would be revocation or sanctions.

Responding to Chairman Wirth's questionnaire was something that was voluntary—that's what we said, and we did not discourage or encourage broadcasters to fill out the survey. The record will show that we submitted to Chairman Wirth very detailed studies on programing. The FCC has programing statistics which we think will be very valuable to the committee.

If you asked us whether the record is complete now in terms of enough studies and programing data for the House Telecommunications Subcommittee to adopt a bill, we would say it is complete.

Mrs. COLLINS. You say what?

Mr. KRASNOW. It is complete.

There are statistics there, both combination of NAB studies and FCC statistics, that give a clear picture.

Mrs. COLLINS. The point is that we asked—this subcommittee asked—NAB, the broadcasters, to provide specific information to us. To date, I am advised that roughly only a third of the surveys that we sent out have come back again—barely a third, as a matter of fact.

Now, surely everybody knows that this information can be subpenaed and all that, but we are trying to get along, get the information that we think we need. And when this subcommittee asked for

it, it is not up to the recipient of our request to determine whether or not we need it. If we didn't need it, we wouldn't ask for it.

I feel very strongly about that point. I would certainly hope that rather than advising, if indeed you did, that there is adequate information based on something that NAB feels of what this subcommittee needs, that that will be reconsidered and that a more positive action will be taken on our request. And I am sure the subcommittee chairman will deal with that in his own way. But that is certainly this Member's feeling of how that should go about.

Mr. KRASNOW. I would like to clarify that NAB did not discourage its members from providing that material. It did not say to its members that the record is complete. That is something we said to the subcommittee.

One of the reasons why some stations didn't fill out the questionnaire—it is a very detailed questionnaire—is that they disagree as a matter of principle with the Government getting into percentages, mandated percentages of Government-preferred programing, which is the right of an individual station.

Mrs. COLLINS. We didn't ask for percentages; we asked you to give us the information based on programing. We asked you for cold facts.

Mr. KRASNOW. The feeling of some licensees was if they responded, the only reason the percentages would be used would be to enable the subcommittee to come up with other percentages.

Mrs. COLLINS. Whether you agree with the idea of us having the information or not, it has still been requested and we fully expect it is going to be forthcoming.

One final point, and that is you will note in response to Mr. Bates' question about racial discrimination that there was laughter in the room, which is filled, as you see, with minorities of all kinds—as we have been told now, Rainbow Coalition, and so forth. I think that points up the fact that if you haven't heard anything or you don't know anything about racial discrimination in the broadcast industry, that you are doing some very selective listening. And may I suggest that NAB might want to tune up its volume so, in fact, you can hear what is going on and what minorities are talking about, and all minorities are talking about now, when it comes down to racial discrimination. Because, indeed, it has been noted and documented that there are some areas that come very close to racial discrimination.

Mr. KRASNOW. I was answering the question in terms of seeing overt acts of discrimination.

Mrs. COLLINS. You said in your legal capacity that you had not seen it; broadcasters had not reported any to you. I would imagine broadcasters have not recorded instances of racial discrimination to you.

Mr. KRASNOW. But what we recognize—as shown in testimony here earlier—that there are instances of stereotyping. There also is an inadequate number of minorities owning broadcast facilities, and as to ownership the record will show there is a sensitivity on the part of broadcasters——

Mrs. COLLINS. Not only in owning and in portrayal, but even in employment, as well.

I have no further questions at this time. As I have done with the other panelists, if I could ask you just for a very, very brief 1-minute statement that you might want to make to clear up any point you might want to do. If not, we will move to the next panel.

All right. If there are no comments, thank you very much for appearing before us.

Our next panel is panel 4. We have: Mr. Cecil Butler, principal, East Lake Communications, Inc.; J. Fred MacDonald, author, Blacks and White TV; Mario L. Baeza, Debevoise & Plimpton; and Mr. Topper Carew, president, Rainbow TV Works.

We are asking that each panelist summarize his written statement and put it in the record, and take 10 minutes to summarize.

STATEMENTS OF CECIL C. BUTLER, PRINCIPAL, EAST LAKE COMMUNICATIONS, INC.; AND J. FRED MacDONALD, AUTHOR, BLACKS AND WHITE TV: AFRO-AMERICANS IN TELEVISION SINCE 1948

Mr. BUTLER. Thank you, Madam Chairperson.

The panel that preceded us in the person of Mr. Krasnow, the general counsel for the NAB, made some——

Mrs. COLLINS. Would you mind closing the door back there, please. We can't hear.

Would you begin again.

Mr. BUTLER. Mr. Krasnow, on the panel that preceded us, made some interesting comments. I found it very intriguing to have him say that the broadcast industry is very concerned about Congress upholding its right to the freedom of speech and the first amendment, at the same time it is asking Congress to eliminate the requirement that it must serve the public interest, convenience, and necessity, and must establish that service in order to justify a renewal of its license.

The comparative renewal process has been in existence for more than 50 years. During that time, more than 10,000 licenses have been issued, and over 300,000 renewals have been given to persons who got licenses. Less than—fewer than 100 licenses have been taken away under the comparative renewal process.

Broadcasters now have an expectancy of renewal that is more than 99 percent. Yet, they are asking Congress to give them greater expectancy of renewal, which would appear to mean that they want 100 percent expectancy of renewal.

At the same time, they don't suggest that Congress change section 301 of the Broadcast Act, the Communications Act of 1934. That section defines the principle that the Government shall maintain Government control over the use of public airwaves by granting licenses and not ownership to persons to broadcast for limited periods of time.

The amendments the broadcast industry suggests to section 309 do not change section 301, but they direct—in fact, require—the Commission to renew licenses unless they find serious violations of the licensee of either the act or the FCC regulations. This requirement in the amendments eliminates the requirement that applicants demonstrate in their renewal applications that they are serving the public interest, convenience, and necessity.

If the Commission determines that an applicant would not serve the public convenience and needs, then the Commission, under the present provisions, has a right to require a hearing be held. The amendment directs renewal without that requirement.

The elimination of comparative renewal would do away with competition. The requirement of a petition to deny does not maintain the requirement that an applicant in seeking renewal be able to establish in a competitive forum that he has a right to have his license renewed.

The elimination of comparative renewal would give away a public resource without compensation, because it would give a broadcaster more than a 99-percent expectancy of renewal.

The elimination of comparative renewal would place beyond Government control the right to use a public asset, the airwaves, in contravention of section 301.

The elimination of comparative renewal would eliminate a requirement that the public interest, convenience, and needs be served without any sanction over the failure to do so.

The elimination of comparative renewal would in effect take the FCC out of the business of regulating broadcasters because there would be no sanctions against a renewal applicant who failed to live up to the public interest, convenience, and necessity requirements.

The justification that the broadcast industry has presented to Congress for elimination of comparative renewal is in effect that it costs them time and money. Since the license costs them very little, how can they claim that the time and money it costs them in order to establish their right to renewal of a license is not justified for the use of a public resource?

Comparative renewal has the built-in constraint on nuisance challenges because the cost of comparative renewal is high and the processing time is long. The only time that a challenge makes sense for a challenge to renewal of a license is if the licensee has been found by the FCC to be culpable of illegal activities or found not to have served the public interest.

The only basis that the broadcast industry has presented to you to justify the elimination of comparative renewal is that the broadcaster wants it. Expert testimony from parties without a vested interest—former Chairman Ferris and Chairman Minnow—have established that this committee has ample grounds for voting down this amendment and has stated that the comparative renewal process served the public interest and should be retained.

I don't think that Congress can justify giving away a public asset just because the broadcasters want it. I believe that the comparative renewal process should be retained. I believe that the comparative renewal process offers the only viable existing means for minorities to acquire ownership of stations in major markets, because the other two means of acquiring ownership meet those of purchasing a station for fair market value from an owner, and that of having a new station licensed, do not exist, in effect.

Stations being purchased for fair market value put in a requirement that any minority which wishes to purchase a station would be required to pay a value in excess of the means of most such applicants. Getting a license for a new frequency is, in effect, not a viable alternative because there are no new frequencies available in major markets.

Therefore, I strongly urge the committee to retain the comparative renewal process. Thank you.

[Mr. Butler's prepared statement follows:]

Statement

of

Cecil C. Butler

Greetings. My companions and I urge you to retain the comparative renewal process which is now being challenged.

Proposed legislation amending the Communications Act of 1934 is now before your Committee. These amendments have the stated purpose of improving this statute by removing obsolete and outdated language and by bringing statutory requirements into line with technological advances and different circumstances. In addition, certain proposed "deregulation" amendments go so far as to effect fundamental changes in the operation of the entire industry and its relationship to the Federal government. A primary effect of these amendments is to eliminate the comparative renewal process codified in Section 309 of the Act. Their stated purpose is to stabilize the licenses of the broadcast industry.

Deregulation as a concept sounds compelling with its clear mandates of economy, government retrenchment and unbridling of the entrepreneurial instincts of our citizenry. When applied to the broadcast industry, however, the concept of deregulation must be very carefully examined to avoid tipping the balance of interests in favor of the entrepreneur over the public. Congress should carefully weigh the effects of broadcast deregulation, especially the replacement of statutory provisions which have been proved effective.

The Communications Act of 1934 at Section 301 defines that balance between private enterprise and public good by adopting as its purpose:

> . . . to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions and periods of the license.

The 1934 Act implemented this policy through language found at Section 309(a) which state that:

> If upon examination of any application for a station license or for the renewal or modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said findings. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard . . .

The foundation of the theory of government regulation of the broadcast industry is that the space through which the broadcast industry transmits its sounds and images belongs to the public. Since that space belongs to the public, it is the responsibility of government to insure that such space is used under rules and in ways that benefit the general public. Government performs its responsibility by regulations which invite private enterprise to use that space for profit. The public interest is protected by the promotion of the broadest possible participation of private entrepreneurs controlled by strict limitations on authority and term of the right to broadcast over that public domain. When a broadcaster's license comes up for renewal it may be challenged before the Commission under Section 309. Both the theory and practice of this balancing of private enterprise and public interest has been proved in exemplary ways for more than 50 years. They show no signs of failure in the face of new technology. The broadcast industry is one of the economy's most lucrative and profitable, and properties command extremely attractive prices. Both in returns and value the industry performs well above the average for the nations businesses.

None of the proposed amendments before this Committee openly purport to change the character of the broadcasters permit to operate from a license to

something more permanent. But the legislation before this Committee proposes to strike out the comparative renewal process established by Section 309 of the Act and substitute something in its place. Comparative hearings for license renewal exists to insure that the license to broadcast does not become converted from a license to a property right to space that belongs to the public. The language in the proposed legislation dictates the granting of renewals of a license, without considering the public interests, convenience and needs unless actions by the licensee justify denial. No competing application can be considered with a renewal application. The broadcast industry claims that these changes are necessary to make it possible for the public to get the greatest benefit of their attention, creativity and investment in better service -- these resources are now being spent on renewals of licenses.

The broadcast industry has for more than 25 years annually come to Congress, claiming that the industry is threatened by potential losses of licenses under the Commission's application of the comparative renewal process. Evidence of the existence of such a threat is scarce. No more than a few licenses can be claimed to ever have been lost through the comparative renewal process. Losses of licenses are minuscule compared to the outstanding licenses and renewals. Any threat presented by comparative renewals is more in the loss of time and money in answering challenges to renewals than in any actual threats to licenses. Even the unsuccessful challenges to licenses that have come up for renewal have been statistically meaningless compared to the renewals granted. The difference between fact and industry claim is probably in the fact that the comparative hearing challenges are very expensive. Yet, there is no economic evidence that this expense harms the industry or affects the public interest negatively. Self generating economic forces operate to severely limit frivolous challenges. The expense to

challengers is much greater than to the licensee seeking renewal, with the challenger bearing a higher risk of failure. The forces of economic prudence dictate that prospective challengers file only against the few renewal applicants most deficient. This economic barrier is in itself an automatic deterrent to challenges at the same time that it is a source of public protection.

If in fact the threat does not exist except in the rhetoric of the broadcast industry and its converts, then what should be the standard for considering these proposed deregulation changes?

I submit that the standard should be whether or not the public interest would be better served by codifying into a near certainty of renewal the broadcasts industry's present expectancy of renewal. The number of challenges that have been filed and the licenses which have been revoked and granted to a challenger under the comparative renewal process are both minuscule. Broadcasters now have a statistical near certainty of renewal. If broadcasters' chances of receiving renewals of licenses were improved from 99% to 100% would the public be better off? Clearly, the threat of a comparative renewal challenges have not harmed the industry or negatively impacted the public interest. There have been no abandonments of licenses, no deterioration in economic strength of licensees and no lack of competition for licenses where there are markets to be served. In the absence of a convincing showing by the broadcast industry that improving the statistically likelihood of renewal to 100% would so improve the industry as to generate marked public interest advances, there is no valid reason to change what exists now. It is very likely that the substitution of an alternative standard such as the quantification standard or some vague definition of serious legislative violation would result in significantly more expense and heightened uncertainty for the Commission, the broadcast industry and the public.

If the history of Section 309 and the comparative renewal process indicates any deficiency, that deficiency has been to provide too much license stability, resulting in too little diversity of ownership. The likelihood of winning a comparative renewal challenge is not great enough in the vast majority of cases to warrant the expenditure required of a challenger who would increase diversity.

The practice of the Commission in applying the comparative renewal process has not resulted in the kind of diversity of ownership and ideas that would produce the public benefit that the language of the legislation might justify. But that is no reason for making the present standard worse. As minorities we believe that the comparative renewal process should be retained and that the proposed legislation to eliminate comparative hearings or to substitute a quantification standard should be defeated.

Minorities and women represent groups practically absent from the roles of owners of broadcast properties. The dearth of ownership by minorities and women excludes these groups from providing diversity to the information and ideas that broad based control of broadcasting must have to insure that the public interest is served.

It is extremely important to minority companies seeking to own broadcast properties that comparative renewal challenges remain a viable way for existing licenses to be challenged and won. Comparative renewal challenges to existing licenses are the only practical avenue available for minority and female ownership in the major markets where constituent populations are significant. This is true because there are only two other ways in which any licensee can obtain a broadcast property. Those ways are through the purchase of a station property at fair market value or to receive a permit to construct a new station. Outright purchase of a station is an unlikely way to get significant minority ownership

because minorities and females cannot normally raise the capital required to purchase major market properties.

Construction of new stations is a highly unlikely approach to greater minority ownership because major markets do not have available frequencies that can be assigned to new stations. There is no room for additional stations.

We conclude that, while the comparative renewal process has not resulted in any significant increase in the number of minority and female owned licensees in the major markets, it should be retained. There are three reasons for that position. First, the comparative renewal process is consistent with the national policy and public service goals for use of the public domain as codified in the 1934 Act. In practice the Act has worked well and the industry operates at an acceptable level of economic vogor without being impaired by the legislative constraints of governmental control. Secondly, the comparative renewal process remains the most viable of the three possible ways for minority and female applicants to gain ownership of a license in a major market. This fact stands out despite the results of no measurable ownership by minority and female applicants after a long history of comparative renewal. Without comparative renewal the chance of minority or female applicants ever getting a license in a major market would not exist, practically. Thirdly, comparative renewals have been the practice of the industry for nearly 50 years. The procedure exists as an incentive to licensees to use their permit to serve the public interest and, periodically, performance is reviewed. The industry has prospered under this practice and the public interest has, to an acceptable degree, been served. There is no need to change what works!!!

Mrs. COLLINS. Thank you.
Mr. MacDonald.

STATEMENT OF J. FRED MacDONALD

Mr. MACDONALD. Thank you, Congresswoman Collins.

I come here as a historian of television and radio, having written a book on the history of radio programing in America from 1920 to 1960, and having written a book recently on the history of blacks in television. I have gained a rather interesting and historical insight into the problem—too often we focus on the media and don't look at the historical perspective, which I think will offer some important understandings.

I think the Government today is in the process of giving away—not selling or bartering—giving away the birthright of every man, woman and child in the United States of America. The airwaves belong to the people; they do not belong to business. Yet it is being handled in such a way that one would think that this was the total preserve of big business—not small business; big business—and that the peoples' rights, the peoples' responsibilities which they have, are to be forgotten.

The arrogance with which the representative from NAB responded to your questions representing the opinions of his constituency was that we should not be punished—we should be rewarded, in a sense—because we have been transgressing; and that we don't have to answer your questions, as if you are just an intruder who wrote out of his own private whim instead of being a representative of the people—more representatives than any other branch of the Government, because the legislature is voted on regularly by everybody in the country. So the Congress cannot request information from arrogant broadcasters.

The move to deregulate that is clearly in the process of unraveling now is part of the mentality that was expressed by the NAB representative; that indeed "they are our airwaves and don't bother us with trivialities such as renewal and responding to your questions. After all, you are only a Congressperson—you are not an owner of a station—and that has a lot more clout with the NAB."

Every civilized country in the world recognizes the importance of having Government—some Government control over the broadcasting industries. In some cases in socialist states the Government owns everything. In other countries such as Canada, the Government even has its own channels. The CBC is a Government corporation; so is the BBC in Britain. We don't think of them as totalitarian dictatorships.

Why should this country be the only country where big corporations run it? Truly, there are those that say multinationals are out to take over the world, and one step on the way is to take over the broadcasting industry of this country, because, after all, it is the richest industry in the world since its programs entertain millions of people nightly in this country and hundreds of millions, if not billions, of people throughout the globe, through international syndication.

I want to know why there is a rush to change the guidelines except for the simple pursuit of greed and more corporate profits.

The best we have heard is it is a lot of paperwork to have to turn many long records, and it is a lot of paperwork to have to renew a license every 3 years—it used to be every 3 years; now they are taking about 5, 7, maybe 10—maybe never.

You are going to give the right of the airways to corporations that are clearly insensitive to any kind of human or humane responsibilities. The public owns the airwaves. So the question arises: Why change the ground rules?

Perhaps some streamlining or modification of bureaucratic excesses is merited. But why do so many legislators and their supporters envision a broadcast system where licensees become owners or all programs succeed or fail because of Neilsen or Arbitron ratings or commerciality supersedes public responsibility? Why extend licenses to even an unlimited number of years? Why relieve broadcasters of the necessity to provide certain amounts of news, discussion and public service shows? Why give the American airways to the big business and do so without asking anything in return?

Television is the most strategic medium we are talking about. In radio, we have thousands and thousands of stations—8,000 or more. That means that it is possible, with so many stations in any city, to narrow-cast. Television is still a broadcast industry, trying to get the largest possibility of audience from three megacorporations—ABC, CBS and NBC, basically operating a triopoly within the system.

Historically, the right of minorities and other aggrieved groups to challenge license renewals, which is so important to public responsibility, has been not particularly successful. But in recent years, in the late 1960's, a station in Mississippi, WLBT-TV in Jackson, was challenged by a local black activist group and indeed the license holder was refused renewal. In Alabama, the seven outlets of the Alabama Educational Television Network were also switched in ownership because Alabama Public Television, in the early 1970's, was found to have been in disregard of its public responsibilities.

Now, the FCC has not been responsive; that is for sure. But theoretically the levers are there. Theoretically, it is possible, or has been possible—and maybe we can say had been possible if the current drive is successful—to challenge insensitive and illegal broadcasting developments.

I think even more to the understanding is to understand where all of this is coming from. Just what is behind this kind of thought?

The authority behind deregulation—and we have seen it in deregulating the parklands, give it to coal companies, give offshore oil leases, sell lands in the parks—they want to give away the Weather Service and who knows what else—the authority behind deregulation is derived from classical economic thought of the late 18th and early 19th centuries.

This is not modern. It maintained that Government should withdraw from economics and let the marketplace determine what commodities and which businessmen failed or succeeded. Deregulation stems from the laissez-faire social, political, and economic attitudes that were really popular and perhaps even important in industrializing Britain and in the United States before the Great Depression of the 1930's.

Then as well as now such systems have little to say about what happens to the unfortunate, to the helpless, to the exploited, to the underclassed. For those situations by the mid-20th century the United States and Europe, the world for that matter, evolved toward a philosophy that demanded Government intervene to protect and assist the weak to guarantee respect for the rights of minorities.

The Government certainly intervened in educational practices when it demanded the integration of schools. The NAB would have us believe that we are somehow interfering in their system should you demand some sort of representation of minorities. Thus the legislators' choice on the question of deregulation also reveals his or her vote on the philosophical issue that is at hand. This is the Reagan Revolution. And it is my reasoned conclusion that American broadcasting needs more Government assistance not less. Rather than support bills calling for further retreat by the FCC and other Government organizations I would strenuously argue for more assistance such as H.R. 1155 which not only calls for special incentives and assistance in promoting minority ownership of radio and TV but suggests an aggressive role in Government of opening and breaking apart the stranglehold of broadcasting to further minority participation.

[Mr. MacDonald's prepared statement follows:]

Testimony of: Dr. J. Fred MacDonald, Professor of History, Northeastern Illinois University, Chicago, IL 60625; author of Blacks and White TV: Afro-Americans in Television Since 1948. (Chicago, Nelson-Hall, 1983).

The Congress of the United States is in the process of giving away the birthright of every man, woman, and child in the United States. Pending before the 98th Congress are bills which, if implemented, would go a long way toward the complete deregulation of American broadcasting. If, as Rep. John Dingell has noted, the airways are indeed a "scarce and valuable resource," it seems unconscionable that in this wave of deregulation fervor in Congress and the White House, the air is about to be surrendered.

In every civilized nation in the world, government exercises some degree of control over national broadcasting operations. Throughout the history of the United States, the federal government has exercised its control via legislation and the Federal Communications Commission (since 1934). Operating under the regulations Congress is now seeking to abolish, radio has become a rich business and television has become even richer. There are thousands of radio outlets and hundreds of TV stations programming every day to hundreds of millions of viewers. American TV programs are seen daily in syndication throughout the world. All of this has been achieved by an industry "encumbered" by required program logs, public service programs, local production necessities, and the mandate to provide news programming. These stations which have flourished have also had to renew their licenses every three years. Why the rush to change the guidelines?

Why the hurry to surrender what few controls the government maintains over the broadcasting industry?

The United States has always recognized that the airways belong to the people of the country. In its various Communications Acts and in additional legislation, the federal government has maintained that broadcasters may run stations and networks in order to make money, but these broadcasters are only leasing the airways from the people's servants, the government. And in return government has always demanded that its good-faith lessees respect the owners of the air by providing programming for all people. Certainly, corporate profits could be the lessee's dominant motive, but there still had to be public service programming and the like.

The question again arises: why change the ground rules? Perhaps some streamlining or modification of bureaucratic excesses is merited, but why do many legislators and their supporters envision a broadcast system where lessees become owners, where all programs succeed or fail based upon Nielsen or Arbitron ratings, and where commerciality supercedes public responsibility? Why extend leases to five, seven, ten, or an unlimited number of years? Why relieve broadcasters of the necessity to provide certain amounts of news, discussion, and public service shows? Why give the American airways to big business...and do so without asking any quid pro quo?

The most strategic medium being so abandoned by government is television. Although it is the most important medium of mass information in the country, it is fast becoming the preserve of three multi-billion dollar corporations--ABC, NBC, and CBS--intent upon making more money than one another, and making more money than the did in the past fiscal year. Deregulation will serve the business interests of the networks. Similarly, local independent and affiliate stations will also

profit by deregulation. Deregulation will make such stations less vulnerable to organized local critics using the threat of license renewal in order to obtain a redress of grievances. Deregulation will also allow them to offer even more escapist fantasy (with higher advertising rates) rather than develop local-origination shows, public service and news programs.

Historically, the regulatory controls exercised by the FCC have been important levers for wronged minorities seeking meaningful responses from the broadcast industry. When Newton Minow, as head of the FCC in the early Kennedy administration, delivered his "vast wasteland" speech in May 1961, he ended a scathing indictment of the banality of American TV with the warning that no longer would license renewals be pro forma. He added, moreover, that well-advertised public meetings would be held locally whenever a station was challenged in its renewal bid for failing to provide responsible programming. It is no coincidence that network television responded to Minow with a wave of intelligent, mature, and sensitive programs--ranging from East Side/West Side and The Nurses, to Breaking Point and the award-winning The Defenders series.

Minority groups, and particularly Afro-American organizations, have appealed to the FCC to prevent license renewals, and on more than one occasion they succeeded in blocking such renewal. Particularly active have been organizations such as the Black Citizens for Fair Media (New York City), the Office of Communication of the United Church of Christ, and the National Association for the Advancement of Colored People. In the mid-1960s minority activists managed to block the license renewal of WLBT-TV (Jackson, Mississippi) on grounds of not serving local racial minorities. In the early 1970s, the FCC under pressure from black groups also refused to renew the licenses of the Alabama Educational Television Commission and its eight outlets, this on the grounds of racial discrimination.

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This is not to imply that the FCC has been a friend of abused minorities. Nor is it meant to suggest that license refusal has been a common practice. On the contrary, the FCC commissioners have almost always been drawn from the broadcast industry, and almost always they have shared the business-first ethic of the industry. License renewal moreover, from the early days of radio regulation to the present era, has been almost automatic. Still, the levers of potential power have been there in the regulations; those feeling abused by the industry or by an individual station always had the theoretical possibility of making broadcasters serve them.

The theory behind deregulation is derived from classical economic thought of the late-18th and early 19th centuries. It maintained that government should withdraw from economics and let the marketplace determine what commodities and which businessmen failed or succeeded. Deregulation stems from the laissez-faire social, political, and economic attitudes especially popular in Great Britain in the midst of the Industrial Revolution, and in the United States before the Great Depression. Then as well as now, such systems have little to say to the unfortunate, the helpless, the exploited, the underclassed. For these situations, by the mid-20th century, the United States and Europe had evolved toward a philosophy demanding government intervention to protect and assist the weak and to guarantee respect for the rights of minorities.

Thus, a legislator's choice on the question of deregulation also reveals his vote on the philosophical issue being debated. It is my reasoned conclusion that American broadcasting needs more government assistance, not less. Rather than support bills calling for a further retreat by the FCC and other government organizations, I would argue strenuously for more assistance. Such a gesture is H.R. 1155 which not only calls for special incentives and assistance in promoting minority ownership of radio and television facilities, but also suggests a more aggressive role for government in opening broadcasting to further minority participation.

32-999 O—84——16

Mrs. COLLINS. The time of the gentleman has expired.

Let me begin with you, Mr. Butler.

Did I understand you to say you do not favor repeal of the comparative renewal process?

Mr. BUTLER. Yes, ma'am.

Mrs. COLLINS. OK.

However, there seems to be deregulation for the broadcasters, repeal of renewal process, they say means certainty. You do not agree—let me ask you this. Do you agree that if in fact there is repeal of comparative renewal that there is no other mechanism where you can have minorities come in to challenge the fact that the current broadcasters have not been representative and have not given heed to their needs?

Mr. BUTLER. I believe that the goals of minority ownership have the best chance of being realized in major marketplaces where minority populations are concentrated with the retention of the comparative renewal process.

Mrs. COLLINS. Didn't you just say that in your opening statement anyway, that in comparative renewal that 99 percent of the licenses were renewed.

Mr. BUTLER. Yes, that is correct.

Mrs. COLLINS. How are you going to fight a 99-percent average if you remove comparative renewal?

Mr. BUTLER. Well, Mrs. Collins, if we retain it you mean?

Mrs. COLLINS. If we retain it, yes.

Mr. BUTLER. The fact that 99 percent of the licenses that have been applied for have been renewed represents the situation where very few of the licenses are challenged and in the future there will not—I don't believe there will be significant challenges to licenses because the cost of challenges are very great and the challenges will only be mounted against the licenses where challengers believe there to be a high degree of possibility that the challenges will be granted and the licenses of the licensees will be revoked.

Mrs. COLLINS. This subcommittee is currently in the process of looking at some legislation and writing legislation where the kinds of certainties you are talking about will become a part of that legislation that we are writing.

One method that we think can help give some leverage to minorities who want to be owners and who want to have good broadcasting for their communities is through a process possibly called, everybody is calling quantification. Perhaps you were not in the room at the time we talked about quantification.

Right now there are three areas in which—there seems to be three areas of agreement. One is in public programing. One is in public affairs programing. That is together with news really. One would be in nonentertainment. But these are just broad areas that one could also say if you have, for example, a news program that that would cover the minority aspect, that that covers the nonentertainment aspect and therefore you have broadcasters and folks going on doing what they have been doing all the time.

It is of some considered opinion by many that if you have a broader coverage which would specify minority programing you might get to the point where you see more minorities in television and we will get to the ownership pretty soon.

Do you want to discuss your thoughts on quantification?

Mr. BUTLER. My argument for retention of the comparative renewal process does not say that you have to—that quantification should not and could not be a part of the law. What I am saying is that the legislation that is being promoted by the broadcast industry specifically, House bills 2370 and 2382, which eliminate the comparative renewal process, and neither one of them to my knowledge have quantification requirements in them——

Mrs. COLLINS. True.

Mr. BUTLER. My position is one against H.R. 2370 and against H.R. 2382, it is not against quantification. It is against the revocation of the comparative renewal process if that would be a part of the quantification.

Mrs. COLLINS. Let me ask you this question then, and I want to get back to the 99 percent licensing renewal. What leveraging do you think we could come up with, what legislation do you think could be written if in fact the comparative renewal process stays intact? We don't have much leverage now by the mere fact we have such few minority-owned broadcast stations.

Mr. BUTLER. I meant to say in answer to your first question that I think one of the reasons that there have been so few, there are so few minority-owned stations is because it is very recently that minorities have begun to challenge under the comparative renewal process the license applications of licensees.

Mrs. COLLINS. I think if you will study the record that it has not been that recent. It is certainly within the last 20 or 25 years, it is not something that just began in the last year or so. It is not a process we have been looking at over just the last year or so.

Mr. BUTLER. I said the concentration of minorities challenging licenses under comparative renewal.

Mrs. COLLINS. Concentration, OK, of minorities, under comparative renewal.

Finish making your point.

Mr. BUTLER. I am sorry, would you repeat the question.

Mrs. COLLINS. I am saying that if in fact comparative renewal is kept which I hope it won't be, unless there is going to be some real meat there—what leverage do minorities have for ownership?

Mr. BUTLER. The leverage that they have under the comparative renewal process is really no greater than that of any other group except that under FCC rules and regulations in the recent past there have been situations where the FCC has granted points or advantages to minorities who have applied for licenses that are being challenged.

If that practice is maintained then there will be leverage for minorities to gain ownership where they challenge existing licensees.

Mrs. COLLINS. Do you think that if we do in this subcommittee pass legislation that deals with quantification, that there should be an inclusion, Mr. MacDonald, of a minority programing standard?

Mr. MACDONALD. I am sorry, I wasn't listening.

Mrs. COLLINS. This subcommittee as you are well aware will be looking at quantification, we are getting ready to write legislation now on quantification. Do you think from the standpoint of leverage, of getting more minority participation, that our bill should include a minority programing standard?

Mr. MACDONALD. Well, it all depends on what the wording is in terms of what is quantified. Maybe I am too cynical but I immediately see station rhetoricians sitting down and deciding that a post-boxing match interview counts as public service because the fighter happened to be Latino or happened to be Afro-American.

I think that the wordage of such a legislation should be extremely specific and not allow for much rhetorical interpretation of just what is public service.

I think that indeed it might be a better way—if specified, that is—of gaining more minority access to programing than the present comparative renewal situation. Ninety-nine percent, it is probably even higher than 99 percent if you want to go back and include the history of radio. Very few radio stations were ever not renewed.

In terms of station ownership though, why not a buyout? Channel 32 in Chicago was recently sold to one corporation. Why could it not have been sold to a minority conglomerate?

I also wonder if minority ownership does translate necessarily into minority programing? The people who want to make money regardless of racial ancestry want to make money. Maybe it is the programers that are really the ones that should begin to feel the heat. They are the ones who provide for the networks and provide—the networks don't go out and make the television series. They are packaged by MCA, or Lorimar, by Columbia Pictures Television or others like that. They are sold then to the networks.

So much of the bigotry and the racial discrimination that we recognize in programing is really a product in the long run or production companies.

Mrs. COLLINS. Your remarks about the production companies is certainly a valid one. Isn't that reason enough, also, regardless of what the ethnic group is, that don't have the proper minority programing to make it clear under quantification rules that there is a minority standard?

Mr. MACDONALD. Absolutely, if indeed those standards and rules under quantification can be so specific that they cannot just be, turned away with simple rhetoric and say, as I mentioned, an interview of a boxer represents an interview or public service program.

Mrs. COLLINS. I have asked other panelists the same question this morning, in the Washington Post this morning there is a proposal to repeal the 777 rule. What are your thoughts on that, Mr. MacDonald?

Mr. MACDONALD. That is the rule that limits ownership of stations?

Mrs. COLLINS. Yes.

Mr. MACDONALD. I think it would be horrible were it ever done away with. You would have immediately what is going on right now in American corporate world, the gobbling up by conglomerates and multinational corporations. You would have immediately big, rich corporations buying out multiple stations in a city and programing so that all of them benefit one another with very little sensitivity to any kind of minority concerns.

The strength of radio relative to television—and radio certainly does not have a clean bill of health—but the strength of radio is

that there are so many, once the stations are bought up—because that would be the first area they would move into—you would be basically back to where you had it before, three or four or five giant multilateral corporations controlling everything that was heard in America.

Mrs. COLLINS. Mr. Butler, your thoughts on that?

Mr. BUTLER. I believe that the ownership rules provide an opportunity for a diversity of ownership and diversity of information and I guess that is part of the public interest and service requirements of the original legislation. I believe that it is not a good idea to do away with the ownership restrictions and I believe that Congress should see that regulation in the light of the elimination of a comparative renewal process as one more step in the direction that will eliminate the opportunities for broadening of ownership at a time when minorities are about to get into the position to own significant numbers of licenses in the major markets.

Mrs. COLLINS. The subject of our hearing had a great deal to do with broadcasting regulation at this time, some members on the subcommittee seem to feel it should be devised so minorities can get into cable. It was mentioned earlier by Mr. Pluria Marshall if I am not mistaken that cable should not even be allowed in black communities because there was such a dearth of minority participation in the cable TV industry.

What do you think of those statements, Mr. MacDonald?

Mr. MACDONALD. I think a better shake for minority Americans is in the future with a plethora of stations in the sense that now, given the situation in broadcasting, the idea is to get one-third of the audience plus some degree thereof over that in order to have a successful program.

When you have a hundred—give a theoretical situation—a hundred stations, all of a sudden the 12 percent black, the 8 percent hispanic, and the other percentages of minorities represent a very large rating.

In terms of an audience to have gotten 12 percent of the audience when there are 40 or 50 competitors along with you is to have a really exciting and very popular program.

But what is important with cable is that there are black programers again. Just because a black company owns the cable outlet doesn't mean there are going to be black programs on there. A black-owned cable company will still show Cinemax, Cable News Network, HBO, C-Span and other programs that white companies do.

Mrs. COLLINS. Are you underscoring the need for EEO guidelines such as Mr. Wheeler was talking about when he was here?

Mr. MACDONALD. Yes, I would wholeheartedly agree.

Mrs. COLLINS. Thank you.

Mr. Butler.

Mr. BUTLER. Congresswoman, my position on that is that ownership irrespective of what controls you put on it, is an essential element in the whole process of serving the public interest. I think that minority ownership has to exist, because it provides for a potential for diversity of information and ideas. I think that the EEO has to exist as well as requirements that licensees serve the public interest by meeting certain standards of programing.

But I think to require programing and EEO without ownership means you eliminate an essential element in the whole process.

Mrs. COLLINS. Don't they work together and isn't there some leverage you have if you have EEO requirements and so forth and so on so you do get a minority perspective? I am not arguing with you at all about whether or not we need minority ownership. Everybody knows we need that. We are trying to make efforts to get it and do everything we can to give minorities the leverage they need.

But the two others can be certainly helpful in getting out the minority view.

Mr. BUTLER. I agree wholeheartedly.

Mrs. COLLINS. Minority perspective when it comes down to America itself.

Mr. BUTLER. Yes, ma'am.

Mrs. COLLINS. Thank you very much.

I don't have any further questions at this time. As I did with other witnesses, I would ask if there is anything you wanted to say on the record that you have not said you can do so at this point in a minute.

Why don't we start with you, Mr. Butler.

Mr. BUTLER. I would just like to reiterate that I feel very strongly that minority ownership is a very important element in the whole procession of freeing the broadcast industry from the narrow views and narrow perspective that it suffers from now by reason of concentration of ownership out of the hands of minorities.

I believe the comparative renewal process along with restrictions which Congress seeks to impose, provides the only viable way for minorities to gain control and ownership from licensees in the major markets.

Mr. MACDONALD. I would encourage the subcommittee to also include in its list of aggrieved peoples along with Afro-Americans and Hispanics and Asian-Pacific people other Caucasian groups. We note in Chicago, for example, Polish-American groups have sued motion picture companies because of their perpetuation of the so-called racial slur or ethnic slur against Polish Americans.

We know of the Italian Anti-Defamation League, we know of the Banai Brith and the Anti-Defamation League, so there are other majority groups out there who have grievances against television and radio.

I would encourage the subcommittee and other interested parties to broaden its appeal to include them also.

Mrs. COLLINS. Thank you very much. I have no further questions at this time.

Our final panelist will be Miss Kathleen Herman, Cable Communications, city of Atlanta.

If you have written testimony, we will place it at this point in the record. If not, we will ask you to confine your summary remarks to 10 minutes as we have been doing with the other witnesses.

STATEMENT OF KATHLEEN HERMAN, CABLE COMMUNICATIONS, CITY OF ATLANTA, GA.

Ms. HERMAN. Thank you very much, Congresswoman Collins.

Thank you very much for inviting me here today. I come here with great anxiety. I work in cable television on a daily basis. I believe I am the only person on your panel today that has a day-to-day working relationship with cable television, with the exception of perhaps—at my level as regulator of cable television, I am the person who tries to deal with all ramifications of a contract between a municipality, a cable operator and the Federal legislation that impacts on our provisions of the contract.

I am alarmed and disturbed about the move toward deregulation of cable television, particularly as it affects minorities. My concern arises from where we are as a group of people in a place and time. We are at this point in a transition from a traditional society to a fully modern participatory society. We need the mechanisms of accomplishing those goals.

I would like to specifically talk about the provision of ownership, programing, rate regulation, as it applies on a very practical working daily basis.

I think it is interesting, first of all, to comment that we are facing legislation which would basically deregulate cable television at a time when it is not available to the very people that we are discussing today. With the exception of Atlanta, Ga., cities such as Chicago, New York, Detroit, Oakland, these are cities with large major populations who are in the process of a franchise who do not have access to cable television at this time, and if the kind of deregulatory bill is passed such as S. 66 represents, they will never be able to enjoy the benefits of this kind of access to the medium. And this kind of media participation is essential to our development as a group of people.

I take issue with Mr. Wheeler's statement that he has a problem with the cities regulating the franchise. If we don't regulate it, it will not be regulated, believe me. We work with this every single day. We fight with interpretations, with words, with rhetoric, as an earlier speaker mentioned, on a daily basis.

We are the only agency to which a citizen can turn if it has problems with the cable company. I do not believe the creation of a commission in Washington will fully or adequately address those needs.

I also take issue with Mr. Wheeler's comments that he considers the franchise fee a hidden tax. It is not a hidden tax. It is very clear to everyone, it is a matter of public record. The dispensing of those revenues is something that every citizen has a right to review on a regular basis. And it is an open free process.

In the city of Atlanta, we take one part of our franchise fee, one quarter of a franchise fee, and return it to the citizen in the form of public access programing. That is programing that is available to the citizen made by the citizens of Atlanta. That money comes directly from the franchise fee.

I also take exception with his comments that access plays for the development of black programing. Everybody knows that you have to spend a lot of money in order to promote a channel. The access

channels in Atlanta are largely used by the minority community. However, there is no money put into the promotion of those channels. There is an inadequate funding of the facilities themselves. The cable companies see that as a lost center in terms of the finance of cable. That is not the place for programing to come to.

I think that it is a point where people who have not had access, who have not been able to bring their positions, bring their issues into the public arena, have an opportunity to do that, but public access is not the end of the line, it is the beginning of an entry into this media business where we can have some real impact on our audience.

We do not need to be confined to public access.

I am a supporter of public access. However, I do know that that is not really where the money is being put in terms of programing.

I would like to support Reverend Jackson's earlier statement that persistent effort is needed on the part of all of us in order to overcome the obstacles we are being faced with in terms of deregulation of cable television. We need to be persistent. We need to be vigilant. Franchise agreements drafted by each municipality needs to be specific in its language, so that it is not open to interpretation, that it is clear what the intent and what the message is and was and continues to be.

In regard to ownership of cable television systems, I think that we need to expand our concept of what ownership really is. Practically speaking, most of us cannot afford to buy and build cable systems. We can, however, afford to own or partially own these systems. Our franchise in Atlanta requires at all times 20 percent of the franchise holders' financial interest be in the hands of minority persons.

Another opportunity for ownership in cable is that of owning the businesses that supply and give service to the cable industry. Part of our franchise in Atlanta requires that the cable company spend 20 percent of its dollars, its total annual dollars, with minority firms. These companies purchase everything from cable construction supplies to vending machines. These are opportunities for minorities to own their own businesses interfacing directly with the cable industry and to also solve some of the problems of employment.

Some other opportunities for ownership of the system include programing service, leased access channels, municipal ownership in which everybody owns the system, and limited partnership which is the new financial trend in terms of the industry financing.

Mrs. COLLINS. That bell which just rang indicated that your time has expired and we can get into the question and answer session at this particular moment.

Given your involvement in cable issues, what are some of the things you think can help cable overcome some of the same hurdles that face a broadcaster, that is, serving minority audiences?

Ms. HERMAN. I honestly think, Madam Chairman, the strength lies on the local level. I do not believe that a Federal commission can adequately address the needs of minorities, monitoring those needs, respond to those needs adequately.

Mrs. COLLINS. What do you think about the EEO language that Mr. Tom Wheeler had spoken about during his testimony today?

Ms. HERMAN. I think that there needs to be at least minimum standards for EEO and small and minority business enterprise plans drafted into the legislation.

Mrs. COLLINS. Currently, in order to get a license renewed, a broadcaster has to air a minimum of 10 percent nonentertainment programing, which includes programing aimed at minorities.

Do you think that cable systems should be subject to the same kind of public interest standards?

Ms. HERMAN. Yes, I do. I am quite concerned that one of the provisions of the current bill to deregulate cable will not allow for you to legislate or require programing. I think this is quite detrimental to our interest.

Mrs. COLLINS. I think I have just one more question. I think you might have answered the question.

Did you mention to me something about local and State control, because my question was going to be: Do you think that the cable industry can improve the EEO record in the absence of State and local regulations? Did you address that question? If not, would you?

Ms. HERMAN. I know that on a practical daily working basis, we have to struggle for every provision of the franchise agreement. Even though it is written, even though it is law, it still must be implemented. That is a daily struggle.

I know that it is absolutely necessary that franchise agreements and the municipal authorities be able to enforce these things on a daily basis.

Mrs. COLLINS. With all the talk about EEO and regulations for standards in cable, some of us might feel pretty assured that the minority perspective employment programing is going to become a reality; but we know that it is still hard to attain.

My next question to you then would be: What would be your suggestion for enforcement of the EEO guidelines of the kind that Mr. Wheeler was talking about today?

Ms. HERMAN. In terms of programing?

Mrs. COLLINS. Programing; EEO generally. He spoke of EEO guidelines. I am thinking in terms of enforcement of guidelines.

In the broadcast industry, I think the licensee can be fined a mere $500. Mr. Marshall indicated he thought the fine ought to be a minimum of $10,000.

Would there be other enforcement mechanisms at the State or local level in monetary fines?

Ms. HERMAN. I can speak to the reference of remedies and the provision of our own franchise agreement in Atlanta. At any time the contract compliance officer finds that there have been direct violations of the provisions over EEO or small business enterprise or any other provision of the contract, there is the remedy of revocation of the contract.

Mrs. COLLINS. Thank you very much. I have no further questions at this time.

We were just advised by a member of his staff that the chairman, John Dingell, who is chairman of the full Energy and Commerce Committee, had planned to come by here and hoped to get by here before these hearings were adjourned. He has not been able to arrive as yet. But he wanted everybody here to know that he is in full support of what we are trying to do here. He is in full

support of the hearings that we have held in Chicago and San Francisco and that we are having today; and that he is very serious about minority participation and the increase thereof.

We had a hearing on Monday, many of you might be aware, which Congressman Mickey Leland had brought in a number of witnesses, and I think that some talked about the invisibility of minorities in television. I think we owe a debt of gratitude to John Dingell and want to thank him on the record. He has been a staunch supporter of the efforts we have now.

With that, the hearing is adjourned, with one exception. I want to thank C-Span for the coverage they have given not only this hearing but all the telecommunications' brain trust meetings that we have had with the Congressional Black Caucus.

[Whereupon, at 1:10 p.m., the hearing was adjourned.]

[The following statements were submitted for the record:]

STATEMENT

By

Robert L. Johnson

President

BLACK ENTERTAINMENT TELEVISION

As President of Black Entertainment Television, the only national black cable programming service, and of District Cablevision, Inc., a minority cable firm seeking the District of Columbia cable franchise, I appreciate the opportunity to address the Congressional Black Caucus Communications Braintrust. I commend the Congressional Black Caucus Communications Braintrust on addressing what I feel is one of the major challenges and opportunities facing black entrepeneurs; expanding our participation in the telecommunications industry, particularly in cable television.

At the present time, minorities own only approximately 50 of the 6,000 cable systems in the United States. With nearly half of the nation not yet wired for cable, minorites will still have the opportunity to bid on franchises; with our growing ability to muster capital and to become creditable competitors, this opportunity is real. However, I feel one of the obstacles to our entry is the gross inconsistency in local regulation of cable and excessive and unnecessary demands placed on cable operators by city officials. Onerous regulation and huge capital costs associated with franchising and construction places a tremendous burden on cable companies and particularly on minority businesspersons. In the absence of clear federal standards on the rights and responsibilities of local governments, cable growth has been suffocated in the urban market where diversity of ownership and programming would most clearly benefit the minority community.

As a potential bidder for the cable franchise in Washington, D.C., I recognize the tremendous challenge faced by new entrants--especially minorities--into cable television system ownership. I believe that the future of cable television service, and the ability of minority businessmen

like myself to compete in this new and growing industry, depends very heavily on the adoption of a comprehensive national cable policy as reflected in S.66, which passed the U.S. Senate on June 14 of this year. This bill reflects a balanced approach to regulating cable television, based on the carefully-crafted compromise between the leadership of the National League of Cities and the National Cable Television Association.

As a member of the National Cable Television Association Board of Directors I can attest to the fact that the compromise does not completely satisfy the legislative goals of either the cable industry, or the cities. It is intended to protect the essential interests of both groups--and, most importantly, the essential interests of the public. Cable subscribers seeking the best possible value for their entertainment dollars could expect cable operators to become much more competitive if this compromise legislation becomes law.

There is a desperate need for a comprehensive national policy for cable television. The compromise legislation provides a framework within which cable can operate to its fullest potential, for the benefit of all. It would allow us as cable operators to make a reasonable contribution to the growth and economic development of cities and help ensure stable and continuous operations. Because cable utilizes a wide variety of services and equipment providers in its development and operation, the stability of the local franchise also benefits the community through its contributions to the growth of other local businesses.

The compromise legislation would benefit cable operators--and especially minority operators--by providing a rational legal environment within which to make investments and operate our businesses. By improving the environment in which cable can compete with the growing range of other video outlets and by improving the legal and investment outlook, a national cable policy would afford minority entrepeneurs a better chance of competing in this dynamic industry. I am convinced the compromise legislation would, upon its passage into law, become a springbroad of opportunity for minority entry into cable system ownership and related businesses.

To further enhance minority entry into cable and other businesses I proposed and our Board of Directors endorsed the establishment of a pilot project linking twelve black colleges and universities in a closed circuit satellite programming system. The purpose of this system would be to bridge the gap that exists between the curricula of these universities and the needs of their students in meeting the employment requirements of major corporations. The network will be used to transmit instructional and informational programming. The Black Entertainment Television Network is spearheading this effort along with other major cable companies in providing the necessary equipment and expertise to connect the twelve educational institutions.

The National Cable Television Association along with major industry-wide companies is hosting the second Business Development Symposium--Minorities and Cable: the interconnect of the 80's, October 26-28 in Washington, D.C. This industry-sponsored meeting is designed to establish direct

communications and increase the business relationships between minority and majority members within the cable industry.

In conclusion, cable television offers a unique opportunity for minorities, both in business opportunities and for those who can enjoy its quality programming and services. To achieve cable's promise of becoming the medium of diversity, it must be allowed to compete. As a cable entrepreneur, I welcome competition, when it's fair. The compromise legislation currently under consideration in the Congress is a good foundation on which cable can grow and compete. The time has come to recognize the tremendously competitive telecommunications industry within which cable operates and to pass legislation which benefits consumers, cities, cable and minorities. The time is now.

BLACK ENTERTAINMENT TELEVISION THE *BEST* IN BLACK ENTERTAINMENT

***Ten Questions and Answers You Should Know About BET.**

1. What is Black Entertainment Television?

Black Entertainment Television (BET), is the nation's first and only cable television satellite network providing a full range of quality Black entertainment and sports programming targeted to the specific viewing interests of Black cable subscribers nationwide. BET programs every evening from 8 pm-2 am EST and is an advertiser supported basic cable network.

2. What programming does Black Entertainment Television offer?

BET provides the cable audience with a variety of Black entertainment and sports programming designed to appeal to a broad range of viewing tastes and interests. BET's programming service offers:

Movies

contemporary feature films and Black classic films.

Music

gospel music, jazz and video soul.

Sports

a full season of college football, basketball and tennis, sports specials and a sports talk show.

Family Programming

Nipsey Russell's Juvenile Jury, Bill Cosby, award winning dramas and challenging series for young people.

Women's Programming

a one hour talk and variety show, a cooking show, a health and fitness show and special features.

Public/Cultural Affairs

America's Black Forum, Newsprobe, Portraits in Black and news commentary.

BET's programming objectives are to showcase the creativity and vitality of the Black entertainment community and provide a national video network to inform and enlighten the Black television viewing public.

3. How is Black Entertainment Television distributed?

BET is distributed via satellite on Western Union's Westar V satellite and can be received by every cable television system in the United States. The cable operator receives the signal and feeds it to the homes in the community that are wired for cable reception.

4. How can I watch Black Entertainment Television?

To receive BET you must live in a community served by a cable television system and you must be a cable television subscriber. As a cable subscriber, you will receive BET's programming as well as other services that the cable system offers as part of the basic cable package. To find out if your local cable system is carrying BET, call the system manager of your local cable system.

5. What if my local cable system is not carrying Black Entertainment Television?

If the cable system serving your community is not carrying BET, call the system manager and ask that the system add BET to serve the viewing interests of the Black community. *Remember, the cable system was granted a franchise by your local elected officials to serve the viewing interests of everyone in the community.*

6. Why doesn't my cable system carry Black Entertainment Television?

BET has received the overwhelming support of the cable television industry. The only reasons the cable system in your community may not carry BET at this time are that the system has yet to install a Westar V earth station to receive BET's signal or has not expanded the channel capacity to add BET's service. Most systems are moving ahead quickly to acquire a Westar V earth station and upgrade the system's channel availability to carry BET and other services. You should ask your cable company to add BET as soon as a channel becomes available.

In addition, call your local city councilmember and ask the councilmember to urge the system to add BET. You should also ask the councilmember to support the local, national and federal cable deregulatory efforts that will make it possible for the cable company to increase its cable/satellite programming services.

The cable company is anxious to increase its subscribers by serving the viewing interests of the Black community *but, they must hear from you to know that BET is the service you want to watch.*

7. Why is there a need for Black Entertainment Television?

Blacks may well be television's best audience in that Black viewers watch more television than any other population group in this country. Regular network television, because it is a mass appeal medium, cannot serve the special viewing

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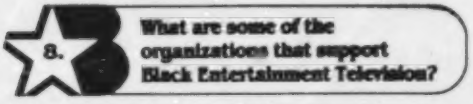
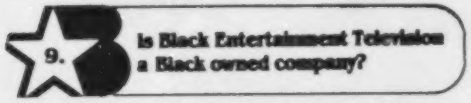
interests of Black consumers with a full range of positive Black programming. Cable television, with its multi-channel capacity, can serve the specific viewing, entertainment and informational needs of Black Americans without any other group forfeiting its own viewing choices.

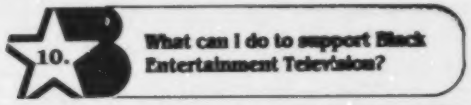
Black Americans, who represent more than 20% of the total U.S. population, deserve the opportunity to receive quality Black programming on a regularly scheduled basis. The diversity of Black programming can make Black and white Americans aware of the cultural creativity of the Black community and contribute to a greater awareness of the vital contributions that Black Americans have made and continue to make in all facets of our society.



BET has received the enthusiastic support of a number of Black organizations including the Urban League, National Association for the Advancement of Colored People, Congressional Black Caucus, National Black Media Coalition, and National Association for State Universities and Land Grant Colleges.



BET is a Black owned and operated company. It has two corporate investors, Taft Broadcasting Company of Cincinnati, Ohio and Tele-Communications, Inc., of Denver, Colorado. Taft is a diversified communications and entertainment company involved in commercial television, radio broadcasting and regional themed amusement parks. Tele-Communications, Inc., is the nation's largest cable company.



There are five important steps you can take to support BET.

1. SUBSCRIBE TO CABLE TELEVISION AND WATCH BLACK ENTERTAINMENT TELEVISION.
2. ASK YOUR FAMILY AND FRIENDS IN YOUR COMMUNITY TO DO THE SAME.
3. TELL YOUR FAMILY AND FRIENDS AROUND THE COUNTRY ABOUT BET AND ASK THEM TO CONTACT THEIR CABLE SYSTEM WITH A REQUEST TO CARRY BET.
4. SUPPORT THE ADVERTISERS WHO SUPPORT BET.
5. FINALLY, CUT OUT THE ATTACHED CARD TODAY AND MAIL IT TO YOUR LOCAL CABLE SYSTEM MANAGER TO SHOW YOUR SUPPORT FOR BET.

Thank you!

Mail to the System Manager of your local cable system

I/We want to watch Black Entertainment Television. BET is available on Westar 5, transponder 12X and by contacting

Black Entertainment Television 202-337-5260
1050 31st Street, N.W., 2nd Floor
Washington, D.C. 20007

Thank you for carrying Black Entertainment Television

NAME_____

STREET_____

CITY/STATE_____ ZIP_____

Mail to Black Entertainment Television

I/We support BET and have contacted the system manager of the local cable system to carry BET.

NAME OF CABLE SYSTEM_____

CITY/STATE_____ ZIP_____

NAME OF SYSTEM MANAGER_____
(If Known)

TESTIMONY

OF

MARIO L. BAEZA

TELECOMMUNICATIONS REREGULATION
AND DEREGULATION: THE IMPACT
ON OPPORTUNITIES FOR MINORITIES

Good afternoon, Mr. Chairman, Madam Chairwoman, members of the Subcommittee and members of the Congressional Black Caucus. My name is Mario L. Baeza. I am a partner in the law firm of Debevoise & Plimpton, New York, New York, where I specialize in corporate finance and telecommunications law. I am also a Lecturer in Law at Harvard Law School where I am currently teaching a course entitled, "New Technology and the Law."

Madam Chairwoman, I am pleased to have the opportunity to address the Subcommittee. The focus of my testimony here today will be the impact of certain proposed legislation on opportunities for minorities in telecommunications.

The term "telecommunications" as it is used today has a broad meaning. It encompasses a wide variety of conduits for moving video, voice and data, including conventional forms such as radio, television and telephones, as well as new technologies, such as cable television, satellite master antenna television, multipoint distribution service and direct broadcast satellites. "Telecommunications" also includes the industries that

supply the information that is distributed over the conduits, whether such information is entertainment programming or computer data.

In order to assess the impact on minorities of current legislative attempts to reregulate[1] or deregulate portions of the telecommunications industry, I believe that it is essential to consider and treat separately the different facets of this industry. The historical and economic problems that have prevented minorities from making appreciable gains in the ownership of conventional television and radio broadcast facilities are simply not the same problems minorities will face with the new telecommunications technologies. Moreover, while the potential for increased minority ownership of conventional broadcast facilities is necessarily limited, no corresponding limitation exists with respect to opportunities for minorities created by certain new technological developments in the telecommunications field. Accord-

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[1] Many of the bills that have been introduced in Congress are not simply attempts to deregulate various aspects of the telecommunications industry, but rather are intended to "reregulate" by substituting one type of regulation for another. Accordingly, I have attempted to assess the impact of what would be lost by regulation which may be removed and what would be gained by the regulation that is to be added.

ingly, after briefly setting forth my conclusions, I shall discuss separately the impact of certain proposed legislation on minorities in the areas of conventional broadcasting and the new telecommunications technologies.

Conclusions

I conclude with respect to conventional broadcasting, that federal efforts seeking to increase minority ownership of broadcast facilities must be intensified, not abandoned; and, specifically, that replacing the comparative hearing process with quantification standards and renewal expectancies will have a direct and immediate adverse impact on opportunities for minorities in broadcasting.

With respect to the new technologies, I believe that government deregulation or forbearance from regulation should be encouraged. Government regulation that restricts entry to telecommunications markets or imposes regulatory burdens is likely to increase the cost of acquiring and operating telecommunications businesses, and therefore is likely to make it more difficult to achieve greater minority ownership and participation. However, I do support structural regulation in the form of tax incentive legislation, such as that contained in

H.R. 2331, in order to facilitate the ability of minorities to gain access to private, rather than public, sources of capital.

Discussion

Conventional Radio and Television Broadcasting.

For the past 50 years, telecommunications in this country has largely centered around over-the-air broadcast radio and television. The Federal Communications Commission ("FCC" or "Commission") first began licensing radio stations in 1927 and began issuing television licenses in 1941.[2] Since that time, television and radio have remained the preeminent mass media telecommunication technologies.

Minorities were not admitted to the radio and television industries until late in the game. It was not until the early 1960's that the FCC licensed this country's first minority-owned broadcast radio station. It was not until the early 1970's that a minority was awarded a local television station license. Today, minorities own and operate less than 2% of all broadcast

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[2] See Chester, Garrison and Willis, Television and Radio, at 30, 40 (1978).

facilities in this country -- ownership which is widely disproportionate to the overall minority population in this society.[3]

Despite these strikingly low statistics, the fact remains that minorities would probably not own or operate any broadcast stations today if it were not for direct and indirect federal economic assistance,[4] coupled with a strong policy of affirmative action.[5]

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[3] See generally Statement of Policy on Minority Ownership in Broadcasting, FCC 82-797 (December 2, 1982) (hereinafter "1982 Policy Statement").

[4] An example of indirect federal economic assistance is 26 U.S.C. § 1071. Section 1071 of the Internal Revenue Code allows a seller of a broadcast station to defer gain realized on a sale, either by:

(1) treating it as involuntary conversion under 26 U.S.C. § 1033 with the recognition of gain avoided by the acquisition of qualified replacement property; or

(2) electing to reduce the basis of certain depreciable property under 26 U.S.C. § 1071, or both.

As of December 13, 1982, the Commission had approved 55 tax certificates.

The distress sale policy of the FCC allows broadcast licensees whose licenses have been designated for revocation hearing, prior to the commencement of the hearing, to sell stations to a minority-owned or controlled entity, at a price "substantially" below its fair market value. Ordinarily such a person would be prohibited from selling, assigning or disposing of his

(Footnote continued)

(Footnote(s) 5 will appear on following pages)

Underlying the Commission's efforts to increase minority involvement in radio and television broadcasting is the notion that diversity (i.e. the expression and recognition of diverse opinions and interests) is both a statutory and constitutional requirement.[4] Courts have

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(Footnote 4 continued from previous page)
interest until the issues have been resolved in his favor. As of December 13, 1982, the Commission had approved 27 such sales.

[5] See 47 C.F.R. §§ 73.125, 73.301, 73.399, 73.680 and 73.793. See also Nondiscrimination in Employment Practices of Broadcast Licensees, 13 F.C.C. 2d 766, 774 (1968). It should be noted that the Commission recently extended its equal employment opportunity regulations to two newly authorized services, low power television, Low Power Television, 47 Fed. Reg. 21468 (May 18, 1982), and direct broadcast satellite systems, Report and Order, 47 Fed. Reg. 31553 (July 21, 1982). See also Nondiscrimination in Employment Practices of Broadcast Licensees, 54 F.C.C. 2d 354, 356 (1975).

[6] 1982 Policy Statement, supra. See also Citizens Communications Center v. FCC, 447 F.2d 1201 (D.C. Cir. 1971), in which the United States Court of Appeals for the District of Columbia, in referring to the "public interest and convenience" standard set forth in the Communications Act of 1934, 47 U.S.C. § 303, stated:

> "Since one very significant aspect of the 'public interest, convenience and necessity' is the need for diverse and antagonistic sources of information, the Commission simply cannot make a valid public interest determination without considering the extent to which the ownership of the media will be concentrated or diversified by the grant of one or another of the applications before it."

As the United States Supreme Court stated in Associ-
(Footnote continued)

repeatedly held that the FCC must take into account the impact of issuing particular broadcast licenses to particular persons on the goal of achieving diversity.[7] It is this statutory and judicial mandate, coupled with the acknowledgement that minority viewpoints and interests were not adequately being represented, that led the Commission to adopt a policy that gave preference to qualified minorities in the award of broadcast licenses.[8] The Commission backed up that policy by, among other things, permitting owners of broadcast properties to defer capital gains taxation upon the sale of the properties to minorities.[9]

(Footnote 6 continued from previous page)
ated Press v. United States, 326 U.S. 1, 20 (1943), the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public ..."

See also Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

[7] See cases cited in footnote 3, supra. See also Citizens Communications Center v. FCC, 447 F.2d 1201 (D.C. Cir. 1971); TV 9 Inc. v. FCC, 495 F.2d 929 (D.C. Cir. 1973), cert. denied, 418 U.S. 986 (1974); and Garrett v. FCC, 513 F.2d 1056 (D.C. Cir. 1975).

[8] Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C. 2d 979 (1978) (hereinafter "1978 Policy Statement").

[9] Id.

I believe that these special measures continue to be necessary and mandated today. Congressional legislation or Commission actions that are designed to cut back on these efforts - whether in the name of deregulation or otherwise - constitute serious departures from established communications principles and may well be unconstitutional. The fact remains that if minorities are to become true participants in the broadcasting media field, special federal efforts must be intensified, not abandoned. Market forces simply will not solve this problem in the broadcast area.

In light of the foregoing, I offer the following observations with respect to the proposed quantification requirements and the renewal expectancy. First, with respect to the general approach of quantification, it should be noted that, while quantification standards are also intended to ensure diversity of programming, quantification does not address the issue of greater minority involvement in telecommunications. The FCC has previously concluded that minority viewpoints and interests would only be represented in the broadcast industry by minority ownership of broadcast facilities.[10] Towards

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[10] See 1978 Policy Statement, supra.

that end, the comparative hearing process, which quantification would replace, has been specifically designed by the FCC to accord a preference to qualified minority applicants.

While less than three broadcast station licenses have been awarded to minorities pursuant to the comparative hearing process,[11] I believe that if the Commission more effectively utilized the comparative hearing process to advance the goals of diversity of ownership and greater minority participation, an increasing number of minorities would gain access to broadcast properties. For example, earlier this year, the Commission revoked RKO's license to operate TV Station WNEC in Boston, Massachusetts, on the grounds that RKO and its affiliates had deliberately misled the Commission in its filings.[12] While Commission proceedings are still pending, it is possible that the FCC will open up to challenge all of RKO's 13 licenses across the country through the comparative hearing process. The potential impact of

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[11] Broadcasting, "Ayes Have it with Wirth Hearing on Comparative Renewal," August 8, 1983, at 34, comments of former FCC Commissioner Charles Ferris testifying before the House Telecommunications Subcommittee on August 4, 1983.

[12] RKO General Inc. (WNEC), Docket No. 18759-61 (1983).

such an action would be enormous. RKO has an established position in many key cities which have significant minority populations. If its licenses are subject to challenge at a comparative hearing, a number of minorities would have an opportunity to gain important footholds in key broadcast markets -- provided that the Commission properly utilizes the comparative hearing process.

Ironically, as this tremendous potential opportunity for minorities is unfolding, both the Commission and Congress are seeking to change the rules. Comparative hearings would be abandoned, replaced by quantification standards which, even more distressingly, would be coupled with a renewal expectancy. The effect of this proposal is that existing station operators would be accorded a strong presumption in favor of the periodic renewal of their licenses. The combination of these proposed actions would, in my view, freeze the ownership of broadcast station licenses in the hands of non-minorities and would therefore jeopardize the ultimate statutory and constitutional goal of assuring diversity of viewpoints and interests in the broadcast media.

For the foregoing reasons, I respectfully submit that the substitution of quantification standards, coupled with a renewal expectancy, for the comparative

hearing process will have a direct and immediate adverse impact on opportunities for minorities in telecommunications and should therefore be resisted.

Opportunities for Minorities in the New Technologies.

It is my belief that recent technological developments offer unprecedented opportunities for minorities in other aspects of the telecommunications industry. The opportunities to which I refer lie principally in the fields of low power television, private cable television, multipoint distribution service, cable interconnect services, cable channel leasing and programming. Unlike conventional television and radio stations that are capital intensive, these new telecommunications technologies reduce significantly the economic barriers to entry and now permit the operation of important telecommunications services at a fraction of their historic costs. This is particularly significant because access to capital has traditionally been a major impediment to the entrance of minorities into the telecommunications field.[13] Set forth below is a brief description of some of the new telecommunications technologies that I believe

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[13] "The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications to the Federal Communications Commission" (May 27, 1982) (Hereinafter "Final Report").

offer particularly attractive opportunities for minorities, and my suggestion as to various legislative measures that would enhance the ability of minorities to take advantage of these opportunities.

Low Power Television

The FCC has recently authorized a new type of television service referred to as Low Power Television ("LPTV").[14] LPTV stations use traditional broadcast technology but operate at a reduced power to avoid interference with existing broadcasters. LPTV stations evolved from small translator stations that simply relayed and amplified a distant television station's signal. The major difference between LPTV and translator stations, until recently, was that the FCC had permitted LPTV to originate its own programming. In a recent clarification, however, the FCC has indicated that translators too may originate programming.[15] An LPTV station would ideally broadcast to a small, discrete community and provide programming that is mostly of local interest

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[14] Report and Order, FCC 82-107, 47 Fed. Reg. 21468 (May 18, 1982).

[15] Memorandum Opinion and Order, FCC 83-129 (March 31, 1983).

or that is not otherwise available to that community. Such a service could be started for less than $300,000, and in some cases for as little as $75,000. The FCC has been deluged with applications since it authorized this service. To date only applications for communities outside of the 212 major television markets are being processed.

LPTV licenses are to be awarded on a lottery system;[14] the first drawing will be held on September 29. While the Commission's policy of giving minority applicants a preference in this lottery is a step in the right direction, the FCC, and if necessary Congress, must now expedite this process so that minority applications for urban areas can be processed in the near future. The FCC should consider rearranging the order in which LPTV applications are processed or taking whatever other steps are necessary to make urban LPTV a reality in 1984. I believe urban LPTV stations will directly and indirectly open up a significant number of opportunities for minorities in the communities that they serve.

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[14] Memorandum Opinion and Order, FCC 82-420 (September, 23, 1982).

Private Cable Television

With the deregulation of satellite receiving technology and its dramatic drop in price, it is no longer necessary to use public streets to operate a profitable cable television system. Today, for approximately $60,000, a private cable operator can wire an apartment complex of 300 units using smaller, less expensive versions of the same equipment used by franchised cable operators, while remaining entirely on private property.[17] Typically, these private systems replace an apartment's rooftop antenna with an earth station and achieve further economies by employing the apartment building's existing wiring to distribute the satellite signals to the apartments. For this reason and because these private cable operators can receive and distribute the same satellite-delivered programming as the franchised cable operator, private systems have come to be known as satellite master antenna television ("SMATV") systems.

Unlike franchised cable operators, SMATV systems can be set up quickly and can begin operation with-

[17] H. Howard and S. Carroll, SMATV: Strategic Opportunities in Private Cable, at 7-8 (National Association of Broadcasters, 1982).

out going through the drawn out bidding and negotiating sessions required to obtain a city-wide franchise from the municipality. Moreover, because SMATV systems serve a smaller population than traditional cable systems, SMATV operators can more easily tailor their programming to the requirements of their subscribers.

Private cable operators can also interconnect two or more SMATV systems through microwave relays known as CARS (Cable Auxiliary Relay Service)[18] and thereby serve more subscribers with greater economies of scale. In the right markets, therefore, a SMATV system can grow well beyond the limits of one apartment house. With the availability of tax incentives to help attract private financing, minority ownership of SMATV systems could become commonplace.

Multipoint Distribution Service

Multipoint Distribution Service ("MDS") operators are common carriers that use microwave transmissions to carry data or video information for distances as great as thirty-five miles in any direction. Until recently, MDS operators had been limited to one, or at most

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[18] Memorandum Opinion and Order, FCC 83-86 (March 3, 1983).

two, channels in any area, even though there are thirty-one available channels. The remaining channels were allocated to educational use in the underutilized Instructional Television Fixed Service ("ITFS").[19] The MDS industry has survived primarily by using its one or two channels to deliver "pay" entertainment programming services such as Home Box Office. Affiliates of the programmer install the proper antenna on each building receiving the service and collect fees which are used to pay the programmer and the MDS common carrier.

After an intensive lobbying effort, MDS operators recently wrested eight additional channels from ITFS designation.[20] An operator will be limited to four channels, however, in each market.[21]

If the FCC maintains the preference plan adopted for the LPTV lottery in granting these new MDS licenses, I expect this reallocation will open doors which have long been closed to minorities in the broadcasting industry. For some $200,000, less than the cost

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[19] Report and Order, FCC 74-34 (January 9, 1974).

[20] Report and Order, FCC 83-243 (May 26, 1983) (hereinafter "MDS Decision").

[21] Id. at 46-47.

of a traditional broadcast channel, a MDS licensee can operate four channels. Moreover, for those who cannot raise this amount of capital or who missed the September 9, 1983 filing date for MDS applications, I see tremendous potential in some markets for providing the same service by leasing the excess channel capacity of the "grandfathered" ITFS licensees.

Subchannels and Vertical Blanking Interval

Recent FCC actions have largely deregulated the use of the vertical blanking interval on MDS and traditional broadcast television channels.[22] (The vertical blanking interval is seen as the black bar on your television set when the picture rolls. It currently contains information that stabilizes the picture or, in some cases, provides captioning for the hearing-impaired. However, the vertical blanking interval has the potential to carry much more information.) Moreover, the FCC has also deregulated the use of MDS and FM radio subchannels[23] (signals which "piggy-back" on the signal of the main channel), and the use of broadcast auxilliary sta-

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[22] MDS Decision, supra; and Report and Order, FCC 83-120 (March 31, 1983) (hereinafter "Teletext Decision").

[23] MDS Decision, supra; and First Report and Order, FCC 83-154 (April 7, 1983).

tions[24] (frequencies used by traditional television stations to transmit live reports between remote locations and the studio).

These developments will permit the broadcast of new services such as teletext, paging and data transmissions. Although I understand these services require costly software and hardware and thus do not currently represent opportunities for those with limited capital, I fully expect that advances in technology will bring these services within a range that will make them attractive opportunities for certain minorities.

Moreover, opportunities do exist today even in this rather technical area. Background music and reading services, for example, can operate on some subchannels and do not require an excessively large initial investment. I also predict that "feeder" services will arise to gather the massive amounts of information needed to satisfy these "information industries".

Leased Access Cable

The increased channel capacity of the newer cable television systems provide greater opportunities for new programming. Because of the difficulty in pro-

[24] Report and Order, FCC 83-153 (April 7, 1983).

gramming between 50 and 120 channels on a cable television system, many of these channels are unused, even by cable systems which are required to provide access channels for use by the public.

In addition to such public access channels, it has been proposed that cable operators with a sufficient number of channels set aside commercial leased access channels which would be rented out to persons wishing to carry their own programming on that channel. This programming could take the form of entertainment, two-way shopping or some other special service. These leased channels make good business sense for the cable television operator who collects revenue for a channel that is otherwise dark and still pays no money to acquire new programming. The cost of such a channel, if not regulated by the franchising authority, would have to be negotiated with the individual cable television operator. As a new conduit for diverse programming, however, leased channels provide an economical alternative to leasing or acquiring a broadcast channel.

Cable System Interconnects

Cable systems can be "connected" by an enterprising individual so as to enable several systems simultaneously to cablecast certain programs or advertise-

ments. The advantage in the advertising context is that a taped commercial aimed at a local market could be "bicycled" around to several cable systems in a given area and, through the use of insertion equipment, be shown simultaneously on the same channel on all systems. Participating cable operators and the interconnect operator each take a percentage of amounts paid for the advertising time. The advantage to each cable operator is that he is able to sell time on his system to advertisers who would otherwise not be interested because of a particular cable operator's limited audience.

Similarly, programming could be developed which would appeal to the subscribers of several different cable systems that could be distributed among them using the interconnect. With slightly more capital, the need for "bicycling" the tapes can be eliminated by using a microwave or "hard" interconnect. An opportunity exists for creating such interconnect systems and thereby reaping a share of the benefits which participating cable operators, advertisers and programmers achieve because of the wider audience they are able to reach.

Minority Programming

Programming broadcast over traditional television and radio channels must appeal to the lowest common denominator of taste in the potential audience. The additional conduits which new technology is providing, however, opens up new channels for programming that can be targeted to very specific audiences. This type of programming is referred to as "narrowcasting." Narrowcasting (as opposed to broadcasting) focuses on a particular segment of an audience and creates programming to meet its tastes and needs. Narrowcasting thus permits, for example, programming aimed solely at a Spanish-speaking audience or an audience concerned primarily with minority issues. Thus new opportunities have and will continue to open up for minorities to produce programming for these new channels.

The point here is that with the recent proliferation of conduits to distribute video, voice and data there is a major shortage of programming. In fact, cable television, MDS, LPTV and other conduits are all fighting over a relatively scarce supply. Moreover, because of narrowcasting, minority programmers need not necessarily appeal to the widest possible audience for revenue to support their programming. Low budget series and feature

films become far more attractive if they need only appeal to a targeted market. It is vital, therefore, that in addition to minority ownership of broadcast and other facilities, the FCC and Congress focus on opportunities for minorities to own and operate the means of producing the programming that will form the basis of a badly needed mass communications link.

Tax Incentive Legislation.

The fact that there may be unparalleled opportunities for minorities in new telecommunications technologies and services does not mean that minorities will necessarily be able to avail themselves of those opportunities. The FCC in a recent study concluded that access to capital, even on a moderate scale, remains a major problem for minorities.[25] Consequently, I believe that federal legislation is still required in order to facilitate the ability of minorities to gain access to capital. Such legislation should be directed towards enabling minorities to tap private rather than public sources of capital. This can best be accomplished through tax incentive legislation, as proposed in H.R. 2331.

H.R. 2331 would effectively increase the available investment tax credit, and thereby increase the incentive to invest, in situations in which the purchase of used telecommunications property would effectuate the minority ownership policy of the FCC. Increasing the tax

[25] "Final Report," supra.

credit available to investors purchasing used property pursuant to a FCC tax certificate would enable minority entrepreneurs to offer potential limited partners the possibility of a $500,000 investment tax credit, a far greater incentive than the present $12,500. This is precisely the type of incentive to private investment that can have an enormously positive impact on minority ownership.

This bill is targeted at the most serious problems facing the minority entrepreneur -- scarcity of capital. The proposal is linked to the FCC tax certificate program that has been so successful in encouraging minority ownership in the communications area.[24] I support this feature of H.R. 2331 because it is a viable, effective means of achieving the long-standing goal of increasing minority ownership and participation in communications. In addition, I support Section 3 of H.R. 2331 -- the extension to non-broadcast communications systems of the non-recognition of gain from the sale or exchange of facilities under § 1071 of the Internal Revenue Code. As I stated earlier, many of the new opportunities in the telecommunications field will be found in the non-broadcast technologies. Extending the non-recognition of gain in FCC sanctioned dispositions will greatly enhance minorities' ability to finance and acquire telecommunications properties.

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[24] The FCC has granted 55 such certificates. See 1982 Policy Statement, supra.